United States Court of Appeals for the Second Circuit

APPENDIX

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UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

PLEASE RETURN TO
RECORDS ROOM

P/S

F. RAY MARSHALL, Secretary of Labor of the United States,
Plaintiff-Appellee,

-against-

GEORGE SNYDER, IRVING ROSENZWEIG, GENERAL TEAMSTERS INDUSTRIAL EMPLOYEES LOCAL 806, 806 RECORD PROCESSORS, INC., ANTHONY CALAGNA, CLARENCE CLARKE, JOSEPH GRIPPO, JAMES ISOLA, BENJAMIN PETCOVE AND WILLIAM SNYDER,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES COURT OF APPEALS
FILED
JUN 17 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

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APPEAL

PRATT, J.

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PLAINTIFFS

Usery, W. J. Jr.

W.J.Usery, Jr., Sect of Labor

DEFENDANTS

Snyder, George et al

vs.

George Snyder, Rosario Albano, George Arth, Anthony Calagna, Clarence Clarke, Irving Conviser, Joseph Grippo, James Isola, James Kant, Sol Lipshitz, Benjamin Petcove, Irving Rosenzweig, William Snyder, General Teamsters Industrial Employees Local 806, and 806 Record Processors, Inc., a New York Corporation,

Defendant

CAUSE

28 USC 1345
Employee retirement income security acto f 1974 (ERISA), allegations fo breach of part 4, title I

ATTORNEYS

For Pltff:
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UNITED STATES DISTRICT COURT DOCKET

77C 116 A-2 **W.J.Usery vs George Snyder**

DATE	NR.	PROCEEDINGS
/20/77		Complaint filed. Summons issued. (1)
-25-77		Notice of motion ret. 2-10-77 with memo of law for a perliminary injunction filed. (2/3)
-7-77		BY BRAMWELL, J.- consent order dtd 2-4-77 filed (see order for particulars). (4)
2-11-77		By PRATT,J.- Order extending time to answer to 3-14-77 filed. (5)
2 28-77		Notice ot take dpposition of C. Mavroson,,A. Craig, J. Isola, W. Snyder & C. Clarke filed. (6)
2-28-77		Pltff's first request for production of docuements filed. (7)
3-1-77		By PRATT,J.- Order dtd. 2-28-77 extending time for deft Conviser to a the complaint to 3-14-77 filed. (8)
3-18-77		Notice to aake depostion of Mavroson, Craig, Calanga, Isola, Snyder & Clarke filed. (9)
~~Pltffs~~		~~firstxxrequestxforxxp productionxofxdocumentsxfiledx~~ fy
3-18-77		Pltff's first request for produciton of documents filed. (10)
3-22-77		ANSWER of General Teamsteers Local 806 filed. (11)
3-22-77		ANSWER of 806 Record processers,Inc.,.filed. (12)
3-24-77		ANSWERS of GRIPPO, CLARKE, ALBANO, CALANGA,SNYDER, PETCOVE, ARTH,LIPSITZ,ISOLA, KANT & CONVISER filed. (13-23)
3-28-77		By PRATT,J.- Order dtd. 3-26-77 extending time for defts Albano, Arth, Calanga, Clarke, Conviser, Grippo, Isola, Lipshitz, Petcove & Snyder to 3-22-77 filed. (24)
3-31-77		ANSWERS of G. S-yder & I. Rosenzweig filed. (25/26)
4-1-77		Deposition transcript of A. Craig filed. (27)
4-1-77		Deposition transcript of A.~~EU~~ Calanga filed. (28)
4-1-77		Deposition transcript of C. Mavroson filed. (29)
4-1-77		Notice to take deposiiton of I. Rosenzweig filed. (30)
4-7-77		Notice to take deposition of Joseph Kissane filed. (31)
4-8-77		By PRATT,J.- Order to show cause ret. 4-11-77why an interim receiver shoulld not be appointed without proof of service and petition filed. (32/33)
4-8-77		Depsoiiton transcripts of Isola & Calanga filed. (34/35)
4-11-77		Deft Rosenzweig objection to notice of deposition filed. (36)
4-12-77		Affidavit of Herbert A. Simon filed. (37)
4-12-77		Affidavit of Arthur D. Felsenfeld filed. (38)
4-12-77		By Pratt, J.- order dtd 4-12-77 substituting Murphy & Maviglia as attys for George Snyder and Irving Rosenzweig filed. (39)
4-12-77		By Pratt, J.- order dtd 4-12-77 substituting Shea, Gould,Climenko & Casey as attys for defts Clarke,Grippo, Conviser, Albano, William Snydef, Isola, Petcove, Calagna and Arth filed. (40)
4-12-77		By Pratt, J.- order dtd 4-12-77 substituting Shea Gould Climenko & Cas as attys for deft Sol Lipshitz filed. (41)
4-12-77		By Pratt, J.- order dtd 4-12-77 substituting Shea Gould Climenko & Cas as attys for deft James Kant filed. (42)
4-13-77		Deposition transcripts of W. Snyder & staeemnet filed. (43/44)
4-21-77		Memo of allw of deft of Labor in support of motion for appoointnment of reciever fildd. (45)
4-21-77		Before PRATT,J.- Case called for hearing. Hearing ordered and begun. Pltff opens a nd deft mopens.Pltff rests. Hearing concluded. Decision reserved
~~reserved~~ 4-28-77		By PRATT,J.- Memo and order dtd 4-28-77 granting plntff's motion to the extent that all defts are enjoined pendente lite from making c causing or permitting to be made any payments by RPI or any or any of the plans to specified defts and appointing Edgar G. Brisach as receiver etc. and reserving decision on all other aspects of motion f

CONTINUED

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DOCKET CONTINUATION SHEET

INTIFF USERY	DEFENDANT SNYDER, et al	DOCKET NO. 77 C 116 PAGE ____ OF ____ PAGES

DATE	NR.	PROCEEDINGS
4-29-77		Memorandum of Herbert Simon filed. (47)
5-4-77		Copy of OSC dtd. 4-8-77 ret. and filed/ unexecuted (48)
5-10-77		By Pratt, J.- order dtd 5-10-77 in amplification of the/ memo & order of April 28, 1977 detailing the duties and powers of the receiver and in particular directs the receiver to file a bond with the clerk of the court in an amount not less than is required by provisions of ERISA §412, 29 USC §1112 etc. filed. (49)
5-12-77		Notice of appeal filed Copy mailed to the C of A. (notice of appeal filed by Local 806) (50)
5-12-77		Bond for undertaking costs on appeal filed. (51)
5-13-77		Unsigned order to show cause staying enforcement of order of 5-10-77 pending appeal filed. (52)
5-13-77		By PRATT, J.- Order dtd 5-12-77 denying application for a stay pending appeal etc. filed on front of doc.#52. ----
5-13-77		By Pratt, J.- memorandum and order dtd 5-13-77 amplifying order dtd 5-12-77 denying application for a stay pending appeal etc. filed. (53) Copies mailed to parties.
5-17-77		Answer to defts' request for production of documents filed. (54)
5-18-77	**	Notice of appeal filed by defts GEORGE SNYDER and IRVING ROSENZWEIG. Copy to C of A. (55)
5-18-77		Defts' Snyder and Rosenzweig's bond for undertaking costs on appeal filed. (56)
5-19-77		Notice of motion/ by defts Calagna etc/ for an order staying the execution of the memorandum and order entered on 4-28-77 pending appeal etc. filed. (57)
5-19-77		ByPratt, J.- order dtd 5-19-77 denying motion for an order staying execution of order of 4-28-77 for reasons set forth in memo and order dtd 5-13-77 filed on the back of doc.# 57.
5-19-77		Notice of motion ret 5-19-77 at 10 AM by defts G.Snyder & I.Rosenzweig for an order staying execution of the memorandum and order entered on 4-28-77 pending appeal etc. filed. (58)
5-19-77		By Pratt,J.- order dtd 5-19-77 denying motion for an order staying execution of order entered on 4-28-77 for reasons set forth in memo and order dtd 5-13-77 filed on the back of doc.#58. ----
*5-18-77		Notice of appeal filed by defts Calagna, Clarke, Grippo, Isola, Petcove, & W.Snyder filed. Copy sent to C of A. (59)
*5-18-77		Defts Calagna,Clarke,Grippo, Isola, Petcove & W.Snyder's bond for undertaking costs on appeal filed. (60)
5-20-77		Stenographer's transcript 4-28-77 (5:15 P.M.) filed. (61)
5-25-77		Civil appela scheduling order filed (62)
5-31-77		Sten. transcript dtd. 5-9-77 filed. (63)
XXXXXXX		XXXXXXXXXXXXXXXXXX
6/9/77		Sten, Transcript Hearing April 2, 1977 (64)

DC-111A (Rev. 1/75)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

W. J. USERY, JR., Secretary of Labor of the United States,

Plaintiff,

vs.

George Snyder, Rosario Albano, George Arth, Anthony Calagna, Clarence Clarke, Irving Conviser, Joseph Grippo, James Isola, James Kant, Sol Lipshitz, Benjamin Petcove, Irving Rosenzweig, William Snyder, General Teamsters Industrial Employees Local 806, and 806 Record Processors, Inc., a New York Corporation,

Defendants.

77C 116

Civil Action No. _______

COMPLAINT

W. J. Usery, Jr., Secretary of the United States Department of Labor, asserts:

1) This action arises under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 et seq., and is brought by the Secretary to enjoin acts and practices which violate Title I of ERISA, to obtain other equitable relief

to redress violations of that title, and to enforce the provisions of that title.

2) This Court has jurisdiction over this action pursuant to ERISA §502(e)(1), 29 U.S.C. 1132(e)(1).

3) Venue of this action lies in the Eastern District of New York pursuant to ERISA §502(e)(2), 29 U.S.C. 1132 (e)(2).

4) Defendants George Synder and Irving Rosenzweig (hereinafter "present welfare trustees") are presently serving as trustees of the Local 806 Teamsters Health and Welfare Fund (hereinafter "Welfare Plan"). The Welfare Plan is an employee benefit plan within the meaning of ERISA §3(3), 29 U.S.C. 1002(3)

5) Defendants Clarence Clarke and Joseph Grippo (hereinafter "present pension trustees") are presently serving as trustees of the Local 806 Teamsters Pension and Retirement Fund (hereinafter "Pension Plan"). The Pension Plan is an employee benefit plan within the meaning of ERISA §3(3), 29 U.S.C. 1002(3).

6) Defendants George Snyder, William Snyder, Benjamin Petcove, and Irving Rosenzweig (hereinafter "present annuity trustees") are presently serving as trustees of the Local 806 Teamsters Annuity Fund (hereinafter "Annuity Plan"). The Annuity Plan is an employee benefit plan within the meaning of ERISA §3(3), 29 U.S.C. 1002(3).

7) Defendants George Arth, William Snyder, James Isola, James Kant, Irving Conviser, Sol Lipshitz, and Benjamin Petcove, (hereinafter "former welfare trustees") have, for periods on and after January 1, 1975, served as trustees of the Welfare Plan.

8) Defendants George Snyder, Rosario Albano, Anthony Calagna, James Isola, James Kant, Irving Conviser, Sol Lipshitz, Benjamin Petcove, and Irving Rosenzweig (hereinafter "former pension trustees") have, for periods on and after January 1, 1975, served as trustees of the Pension Plan.

9) The defendant present welfare trustees, present pension trustees, present annuity trustees, and former welfare and pension trustees are, or have been, as trustees, fiduciaries of the plans within the meaning of ERISA §3(21)(A), 29 U.S.C. 1002(21)(A).

10) General Teamsters Industrial Employees Local 806 (hereinafter the "Union") is an employee organization whose members are covered by the Welfare, Pension, and Annuity Plans. The Union is a party in interest with respect to the plans within the meaning of ERISA §3(14), 29 U.S.C. 1002(14).

11) Defendant 806 Record Processors, Inc. is a New York corporation whose principal office is in the Eastern District of New York. 806 Record Processors, Inc. is owned and controlled by the Welfare Plan, by virtue of the Welfare Plan's ownership of all the outstanding stock of 806 Record Processors, Inc.

12) Defendant former welfare trustees and former pension trustees have permitted and defendant present welfare trustees and pension trustees are permitting, the expenditure of large and unwarranted sums of money from Welfare and Pension Plan assets, including payments totalling approximately one million dollars to defendant-trustee George Snyder which are far in excess of reasonable compensation for any services he actually rendered, which expenditures are in violation of ERISA §404(a)(1)(A)-(B), 29 U.S.C. 1104(a)(1)(A)-(B).

13) Defendant former pension trustees have authorized or permitted the expenditure of Pension Plan assets in sums totalling some $380,000 for the refurbishing and redecoration of office quarters for the Union and for the Welfare and Annuity Plans (as well as for the Pension Plan), which expenditures were in violation of ERISA §404(a)(1)(A)-(B), 29 U.S.C. 1104(a)(1)(A)-(B).

14) Present welfare trustees George Snyder and Irving Rosenzweig and the former welfare trustees have caused the Welfare plan to engage in a transaction prohibited by ERISA §406 (a), 29 U.S.C. 1106(a), by causing or permitting the Plan to transfer some $290,000 in Welfare Plan assets indirectly to defendant Union. This transfer was accomplished by a series of two transactions in which first the Welfare Plan invested some $300,000 of its assets in all of the stock of defendant 806 Records Processors, Inc., which $300,000 then represented all, or substantially all, of the assets of 806-R.P.I.; and then 806-R.P.I., in turn, loaned defendant Union some $290,000, which loan remains substantially outstanding.

15) Unless restrained by Order of this Court, defendants will continue to act with respect to the Welfare and Pension Plans, and may act with respect to the Annuity Plan, in violation of the fiduciary duties imposed on them by ERISA §404, 29 U.S.C. 1104.

WHEREFORE, the Secretary of Labor prays that this Court:

1) Remove from fiduciary office each of the defendants who is currently serving as a trustee;

2) Enjoin each of the individual defendants from further service as a fiduciary of these employee benefit plans and further enjoin these defendants from service as a fiduciary of any employee

benefit plan for a period of at least five years from the entry of the final judgment herein;

3) Supervise and approve the installation of successor trustees who are independent of the present defendants for the Welfare Plan, the Pension Plan, and the Annuity Plan;

4) Appoint an interim receiver for the Welfare, Pension, and Annuity Plans to assume the duties of the defendant trustees during the pendency of this action for their removal and until such time as new trustees shall have been approved by this Court;

5) Rescind the series of transactions by which assets of the Welfare Plan were unlawfully transferred to the Union through 806 Record Processors, Inc.;

6) Order dissolution of 806 Record Processors, Inc., and an accounting of its assets;

7) Enter judgment against defendants in restitution, including lost profits, of all amounts not otherwise recovered which were paid in connection with matters herein alleged on or after January 1, 1975, from Welfare or Pension Plan assets and which are in excess of reasonable expenses of administering the Plans;

8) Award plaintiff Secretary the costs of this action; and

9) Provide such further relief as under the circumstances may be equitable and just.

For the Secretary of Labor

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CONSENT ORDER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

F. RAY MARSHALL (Successor to
W. J. Usery, Jr.), Secretary
of Labor of the United States,

Plaintiff,

vs.

George Snyder, Rosario Albano,
George Arth, Anthony Calagna,
Clarence Clarke, Irving Conviser,
Joseph Grippo, James Isola,
James Kant, Sol Lipshitz,
Benjamin Petcove, Irving
Rosenzweig, William Snyder,
General Teamsters Industrial
Employees Local 806, and 806
Record Processors, Inc., a
New York Corporation,

Defendants.

Civil Action No. 77C 116

CONSENT ORDER

The parties to this action, by and through their counsel, hereby stipulate and agree that the Court enter this Order and that upon entry of this Order by the Court, the plaintiff shall withdraw his pending Motion for Preliminary Injunction.

The defendants, by consenting to this Order, submit to the jurisdiction of the Court but do not admit to any of the allegations contained in the Complaint nor does this constitute a waiver of any defenses which may be available.

IT IS ORDERED, ADJUDGED AND DECREED by the Court that during the pendency of this action and until further order of the Court:

1) that defendant trustees of the Local 806 Welfare Fund, Pension Fund, and Annuity Fund shall not make or permit to be made any direct or indirect payments for any purpose from the assets of the respective Funds of which they are trustees to defendant George Snyder, to any of the other individual defendants, to defendant Local 806, or for the benefit of any of said defendants;

2) that defendant 806 Record Processors, Inc. shall not hereafter make or permit to be made any direct or indirect payments for any purpose from its assets to defendant George Snyder, to any of the other individual defendants, to defendant Local 806, or for the benefit of any of said defendants; with the only exception that 806 Record Processors, Inc. may continue to make salary payments for services actually rendered to defendants Clarence Clarke, Anthony Calagna, James Isola, and William Snyder in amounts not exceeding the following:

	Maximum per Week
Anthony Calagna	$750
Clarence Clarke	$300
James Isola	$325
William Snyder	$600

3) that defendant trustees of the Welfare Fund, Pension Fund, and Annuity Fund shall make all books and records of the respective Funds and of 806 Record Processors, Inc. available for inspection and copying to the attorneys for the plaintiff or their agents, during normal business hours upon one (1) day's prior notice.

It is further Ordered that plaintiff may withdraw his pending Motion for Preliminary Injunction.

Entered February 4, 1977

Henry Bramwell
United States District Judge

Mary S. Calfee
Mary S. Calfee
Attorney
U.S. Department of Labor

Herbert A. Simon
Herbert A. Simon
Attorney for All Defendants

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Ray Marshall, Secretary of Labor of the United States Plaintiff, vs. George Snyder, Rosario Albano, George Arth, Anthony Calagna, Clarence Clarke, Irving Conviser, Joseph Grippo, James Isola, James Kant, Sol Lipshitz, Benjamin Petcove, Irving Rosenzweig, William Snyder, General Teamsters Industrial Employees, Local 806 and 806 Record Processors, Inc., a New York Corporation, Defendants.	Civil Action No. 77C 116

PETITION FOR AN ORDER TO SHOW CAUSE WHY CERTAIN DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT, FOR THE APPOINTMENT OF A RECEIVER AND FOR OTHER RELIEF

Plaintiff Ray Marshall, United States Secretary of Labor, respectfully petitions this Court for an order directing defendants herein to show cause, if any there be, why certain of them should not be held in civil contempt of this court, why a receiver should not be appointed to assume full direction and control of the operations and expenditures of Local 806 Health and Welfare Plan, Local 806 Pension Plan and Local 806 Annuity Plan (hereafter, the "plans") and 806 Record Processors, Inc., ("the corporation"), and why defendants should not provide agents of the plaintiff access to all books and records of the corporation and other proper discovery for the purpose of verifying the expenditure of plan assets and enforcing the terms of this court's order. In support of this petition, and as is more fully set out in the attached affidavits, petitioner would show:

1. This action was filed on January 20, 1977 pursuant to Section 502 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1132(e)(1), to restrain certain fiduciary violations of said Act by defendants including, but not limited to, (a) payments to defendant George Snyder from plan assets in excess of one million dollars since January 1, 1975, (b), creation of a sham corporation, 806 Record Processors, Inc., through which assets of the plans have been diverted from their proper use to and for the benefit of Local 806 and its officers, and (c) the use of approximately $380,000 of pension plan assets for the refurbishing and redecoration of the office quarters of Local 806, the plans and 806 Record Processors, Inc.

2. Plaintiff by motion for a preliminary injunction sought a prohibition on all further payments from the plans to defendants George Snyder and Local 806 and the appointment of a receiver for the plans.

3. On February 4, 1977, a consent order was approved by this Court which, inter alia prohibited the plans and the wel-

fare plan's wholly owed subsidiary, the defendant corporation, from making any payments, direct or indirect, for any purpose to any of the defendants including Local 806 excepting only to four individual defendants who were allowed to continue receiving salary payments "for services actually rendered" to the corporation.

4. Plaintiff promptly instituted discovery proceedings, one purpose of which was to ascertain the facts relating to the services actually being performed by defendants Isola, Calagna, Clarke and W. Snyder in exchange for the payments they received under the provisions of the consent order.

5. As is more fully set out in the attached affidavit of Mary S. Calfee, plaintiff's attempts to make such discovery have been delayed, obstructed and frustrated by the defendants. For this reason it has been impossible for plaintiff fully to determine to what extent the consent order has been violated.

6. As is more fully set out in the attached affidavits of Joseph Kissane and Mary S. Calfee, and in paragraph 7 below, there is substantial evidence indicating ongoing violation by the defendants of the order. Other and more serious violations of the order, which because of the matters set forth in paragraph 5 above plaintiff has been unable to discover, may be occurring.

7. The available evidence indicates that: a) payments are being made to defendants Isola, Calagna, Clarke and W. Snyder for work performed for the union, or for no work, but in any event not for any substantial work properly performed for defendant corporation; and b) payments have been made to defendants Isola and Clark in excess of the maximum amounts specified in the order; for example, as in the affi davit

of Joseph Kissane attached hereto, defendant Isola, during the period from February 7, 1977 to March 28, 1977 was permitted a maximum total payment of $6,800, but in fact, was paid $8,850; c) payments are being made to other individuals by the corporation for work actually performed for the union or for no work, but in any event not for work properly performed for defendant corporation.

8. Because of these violations and the threat of more serious violations, and because plaintiff is unable to secure appropriate and relevant information from defendants, plaintiff believes and alleges that absent further immediate action by the court the participants and beneficiaries of the plans and the public interest are likely to suffer additional irreparable harm through the further diversion of plan assets, despite the clear and express terms of this court's order of February 4, 1977.

WHEREFORE petitioner respectfully prays that:

1. Defendants be ordered to show cause, if any there be, why a receiver should not be appointed by this Court to assume full direction and control of the operations and expenditures of the plans and of the welfare plan's corporate subsidiary;

2. Defendants Anthony Calagna, Clarence Clarke, James Isola, and William Snyder be ordered to show cause, if any there be, why they should not be held in civil contempt of this Court for violation of this Court's order of February 4, 1977;

3. Defendant 806 Record Processors, Inc. and its officers and directors be ordered to show cause, if any there be, why they should not be held in civil contempt of this Court for permitting payments to be made in violation of the order for

permitting payments to be made in violation of the order for the benefit of themselves, other individual defendants and defendant Local 806;

4. Defendant trustees be ordered to show cause, if any there be, why they should not be held in civil contempt of this Court for permitting payments to be made for the benefit of other individual defendants and Local 806;

5. Payments to Anthony Calagna, Clarence Clarke, James Isola and William Snyder be enjoined;

6. All defendants be ordered to make such discovery to plaintiff as plaintiff shall properly demand under the terms of the order or the Federal Rules of Civil Procedure; that the corporation be directed to make all its books henceforth fully available to plaintiff at all reasonable times; and that defendants Clarke and Rosenzweig be directed to present themselves forthwith to plaintiff for deposition on oral examination;

7. Plaintiff be awarded reasonable fees and costs of this proceeding;

8. This Court grant plaintiff such further relief as may be equitable and just.

Respectfully submitted,

Mary S. Calfee
Sherwin S. Kaplan
Attorneys
U.S. Department of Labor
Office of the Solicitor
Plan Benefits Security Division
200 Constitution Avenue, N.W.
Washington, D.C. 20210

AFFIDAVIT OF MARY S. CALFEE, ESQ., FOR PLAINTIFF, IN SUPPORT OF PETITION

AFFIDAVIT

Washington) SS.
District of Columbia)

MARY S. CALFEE, being duly sworn, deposes and says:

1. I am an attorney employed in the Plan Benefits Security Division of the Office of the Solicitor of the United States Department of Labor. I make this affidavit in support of Plaintiff's Petition for an Order to Show Cause in Marshall v. Snyder et al.

2. On January 20, 1977, plaintiff filed this action against past and present trustees of Local 806 Health and Welfare Plan, Local 806 Pension Plan, Local 806 Annunity Plan (hereafter the "plans"), General Teamsters Industrial Employees Local 806 (hereafter "Local 806"), and 806 Record Processors, Inc., (hereafter "the corporation" or "806 RPI"), a New York Corporation which is wholly owned by the welfare plan, alleging fiduciary violations of the Employee Retirement Income Security Act of 1974 (ERISA) by such past and present trustees. Among the relief sought was the removal of all present trustees, restitution of all sums improperly diverted, and dissolution of 806 RPI.

3. At the time this action was filed, plaintiff had information indicating that the wholesale diversion of plan assets was continuing and therefore filed a motion for preliminary injunction seeking the immediate cessation of all such payments to defendants George Snyder and Local 806 and the appointment of an interim receiver to assume control of the plans and to insure the proper distribution of their assets.

4. Prior to the hearing of said motion, plaintiff and all defendants reached agreement on the terms of a consent order entered by the court on February 4, 1977. The order prohibits defendant plan trustees and defendant 806 Record Processors, Inc. from making any payments, direct or indirect, to nine individual defendants and to Local 806 from either plan or 806 RPI assets. Four individual defendants, Anthony Calagna, Clarence Clarke, James Isola and William Snyder, are allowed to continue to receive "salary payments for services actually rendered" to 806 RPI.

5. Plaintiff promptly instituted discovery proceedings, one purpose of which was to ascertain the facts relating to the services actually being performed by defendants Isola, Calagna, Clarke and W. Snyder in exchange for the payments they received under the provisions of the consent order.

6. On February 24, 1977, notice was given that plaintiff proposed commencing on March 2, 1977, (on a schedule agreed to by then-counsel for all the defendants) to take the depositions of Constance Mavroson, (an employee of Local 806), Annie Craig, (an employee of 806 RPI), and of the four defendants who under the order are authorized to continue to receive salary payments for services they actually render to 806 RPI.

7. On March 22, after the depositions had been twice rescheduled as a result of defendants' counsels' requests, the deposition of Constance Mavroson commenced. She testified, among other things, as follows:

a) She is office manager and head bookkeeper for the three plans, for Local 806 and for 806 RPI and the responsibility of her job involves "the complete running" of the Office which these organizations share. (Mavronson Deposition at pp.5-6)

b) The present officers of the union are Anthony Calagna, President; James Isola, Vice President; George Snyder, Secretary Treasurer; Willian Snyder, Recording Secretary; John Gonsalez, Rosario Albano, and George Arth, trustees; and Ronald Kremins, business agent. (pp. 23-24) She stated that she did not know what Mr. Albano and Mr. Arth did as trustees. (pp. 50-51)

c) The Union has [organized] roughly two hundred shops, each under separate contract; and each union officer has a certain number of shops which he is in charge of and services. (pp. 24-26)

d) So far as she knows each man who services a given shop negotiates the collective bargaining agreement for that shop (p. 26); handles the grievances under the contract for that shop (p.30); deals with labor management problems (p. 61); and converses with and assists members with health and pension claims (pp. 140-141).

e) So far as she knows the only job responsibilities Mr. Calagna, Mr. Isola, Mr. Clarke, and Mr. William Snyder have are servicing shops. (pp. 46-49, 74-75). She stated that neither Mr. Calagna nor Mr. Isola have any responsibility respecting the approval and processing of health or pension benefits and that Mr. William Snyder has no responsibilities in the paper processing of health claims. (pp. 75-76, 80-81)

f) Marie Shannon makes up the pension checks each month (p. 44) and Mrs. Mavroson or the other girls in the office send out and she processes pension applications. (pp.46-47)

g) Respecting health benefit claims, the Claims Adjustor Annie Craig determines whether or not each and every medical bill submitted is properly payable, processes these claims and sends them out. (pp. 47-49)

h) She thought Anthony Calagna is "on 806 Processors" but did not know what his job titles or functions were. (p. 71)

i) All the other girls in the office do "general clerical work" and that general clerical work includes work for the welfare fund, the pension fund and the union. (p. 68)

j) The only persons on the payroll of the union from January 1977 through the date of the deposition have been herself, Mr. Arth, and Mr. Albano. (p. 90)

8. On the afternoon of March 22, the deposition of Annie Craig commenced. She testified among other things, as follows:

a) She is the claims examiner for 806 RPI (Craig Deposition at p. 3); she examines all [health] claims that come in, and has no assistants working under her. (pp. 6-7)

b) Her job includes processing the claim, figuring out the amount to be paid, and typing up a check which is presented, without supporting papers, to Mr. Clarke who signs it and then she mails it out. (pp. 9-11)

c) The only persons with whom she consults in processing claims are Mrs. Mavroson, Toni Barbara (a consultant with a company which provides computer service) and the doctors and hospitals involved. (pp. 13-14)

d) She does not consult with officials or employees of the union, the pension plan, or the health and welfare plan in the course of her job. (pp. 14-15)

e) She does not know what other activities 806 RPI is engaged in (p. 16); and she does not know what other individuals work for 806 RPI. (p. 19)

f) She does not know whether James Isola, William Snyder, or Anthony Calagna perform services for 806 RPI and the the only service of which she is aware that Clarence Clarke performs is to sign checks. (pp. 20-21)

9. During their depositions Mrs. Mavroson and Miss Craig were represented by Herbert A. Simon, the same counsel who also represents Local 806 and 806 RPI. At Mr. Simon's express direction, both Ms. Mavroson and Ms. Craig declined and refused to answer any questions relating to the internal operation or procedures of 806 RPI, including questions relating to payroll procedures (Mavroson Dep. p. 8), the determination of salary levels for RPI employees (Mavroson Dep. pp. 11 and 15), the number of automobiles leased by 806 RPI (Mavroson dep. p. 84), the identity of the individual who authorized salary increases for RPI employees in 1977 (Mavroson dep. 89-90), and even the number of weekly welfare claims processed by 806 RPI (Craig Dep. p. 15).

10. On March 23, 1977, 806 RPI, by and through its attorney, refused to produce certain documents and records requested pursuant to Rule 34, F.R.C.P., pertaining to said corporation and within its possession and control, notwithstanding the fact that the consent order inter alia expressly provides plaintiff with access to the books and records of 806 RPI. Counsel orally stated that such production was being withheld on the ground that the documents pertained to the internal operations of said corporation. No written objection to such production has been received at any time, and the records have not been produced.

11. On March 23, 1977, Anthony Calagna appeared pursuant to a Notice of Deposition previously served. After he was sworn and identified himself, I advised him of his constitutional right not to give evidence which might tend to incriminate him and of the penalties for perjury. I had previously informed counsel for Mr. Calagna of my intention so to advise his clients.

12. Immediately after such advice was given, counsel for Local 806 and 806 RPI, and counsel for the other two defendants left the room and the proceedings were recessed for more than an hour, after which counsel for Mr. Calagna announced that he would not proceed with the deposition of either Mr. Calagna or Mr. Isola that day and, over the objection of counsel for plaintiff, he adjourned the proceeding.

13. When the proceeding resumed on March 30, 1977, both Mr. Calagna and Mr. Isola refused, asserting their privilege under the fifth amendment to the U.S. Constitution not to incriminate themselves, to answer any questions, including questions relating to their duties as employees of 806 RPI,

the uses to which assets of the plans are currently being put and the identities of current plan trustees.

14. I am informed and believe on the basis on information I received from Sherwin Kaplan, plaintiff's co-counsel in this action, that upon continuation of the proceedings on April 5, 1977 Mr. William Snyder refused, asserting his privilege under the fifth amendment to the U.S. Constitution not to incriminate himself, to answer any questions, including questions relating to his duties as an employee of 806 RPI, the uses to which assets of the plan are currently being put and the identities of the current plan trustees.

15. Since the original notice of February 24, 1977, and pursuant to subsequent notice filed and served, plaintiff has sought unsuccessfully to depose Clarence Clarke, who is one of the four individual defendants who are allowed to continue to receive "salary payments for services actually rendered" to 806 RPI, who is current by a pension fund trustee, and who upon information and belief may be a current welfare fund trustee.

16. I have also unsuccessfully sought to depose welfare fund trustee Irving Rosenzweig. Plaintiff filed and served by hand a Notice of Deposition for Mr. Rosenzweig on April 1, 1977, said deposition to be set for April 6, 1977. On April 5, 1977, counsel for Mr. Rosenzweig served an Objection to Notice of Deposition on the grounds that the Notice was not served a reasonable time in advance. Mr. Rosenzweig did not appear to be deposed on April 6, 1977.

17. Herbert A. Simon, counsel for 806 RPI, stated to me me by telephone on April 6, 1977, that 806 RPI currently receives its total income from the following sources: 1) monthly service

payments of approximately $3000 and $25,000 from the pension plan and welfare plan respectively; 2) repayments from local 806, the pension plan, and the welfare plan from rental payments made on their behalf in the past by 806 RPI, and 3) repayments from local 806 to service the loan made to it from the assets of 806 RPI. He stated that the monthly payments to 806 RPI from the welfare and pension plans were in return for services provided to those plans. He declined to permit an agent for the Secretary of Labor to inspect certain records of 806 RPI on April 7, 1977, notwithstanding the terms of the consent order permitting such access.

18. I have discussed the matters set forth in this affidavit and in the related Petition for an Order to Show Cause with Counsel for defendants Calagna, Isola, Clarke, and W. Snyder and with counsel for defendants 806 RPI and Local 806. I am satisfied that the interim relief sought by the Secretary of Labor in this Petition cannot be obtained from the defendants voluntarily and without further order of the court. I have tried unsuccessfully to reach counsel for defendants Irving Rosenzweig and George Snyder to discuss these matters.

Mary S. Calfee
MARY S. CALFEE

Subscribed and sworn
before me this 7th
day of April, 1977

Notary Public

My Commission [illegible] 5/31/79

AFFIDAVIT OF JOSEPH KISSANE, FOR PLAINTIFF, IN SUPPORT OF PETITION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RAY MARSHALL, Secretary of Labor of the United States, Plaintiff,	
vs.	Civil Action No. 77C 116
George Snyder, et al. Defendants.	

AFFIDAVIT OF JOSEPH KISSANE

STATE OF NEW YORK)
: SS
COUNTY OF NEW YORK)

I, Joseph Kissane, hereby depose and state as follows:

1. I am employed by the Department of Labor and my title is Senior Compliance Officer in the New York Area Office of the Labor-Management Services Administration of the Department of Labor. I am assigned to the Pension and Welfare Benefits Program. In connection with my duties and also pursuant to the Consent Order entered in this action on February 4, 1977, I have had occasion to review, as described below, the financial and certain other records of the Local 806 Teamsters Health and Welfare Fund, the Local 806 Teamsters Pension and Retirement Fund, and 806 Record Processors, Inc., at their common offices at 275 Broadhollow Road, Melville, New York.

2. On February 23, 1977 and March 29, 1977, I examined, among other things, the following records:
   a) 1977 cash receipts and disbursements journals for Local 806 Record Processors, Inc., Local 806 Welfare, Pension and Annuity Funds.

b) Cancelled checks, bank statements and check books for the above organizations.

3. The records of the Welfare Plan and the Pension Plan show the following total expenditures for "claims processing" for the period January 1, 1977 to March 25, 1977:

a)	Pension	1/1/77 - 3/25/77	$6,000
b)	Welfare	1/1/77 - 3/25/77	$90,000

These payments were made to 806 Record Processors, Inc. and are denominated in the records of 806 Record Processors Inc., as "service income".

4. With respect to the period February 7, 1977 to March 28, 1977, the above-mentioned records indicate payments to four defendants herein as follows:

Anthony Calagna

Check No.	Date	Salary	Expenses
1959	2/10/77	600	150
1983	2/18/77	600	150
2000	2/25/77	600	150
2112	3/7/77	600	150
2063	3/14/77	450	150
2074	3/21/77	450	150
2081	3/28/77	450	150
Total		3750	1050

James Isola

Check No.	Date	Salary	Expenses
1952	2/7/77	675	150
1960	2/14/77	675	150
1981	2/17/77	1350	
1989	2/18/77	675	150
2006	2/24/77	675	150
2018	3/7/77	675	150
2058	3/3/77	1350	150
2066	3/14/77	525	150
2075	3/21/77	525	150
2082	3/28/77	525	150
Total		7650	1200

William Snyder

Check No.	Date	Salary	Expenses
1957	2/7/77	450	150
1961	2/14/77	450	150
1984	2/18/77	450	150
2001	2/25/77	450	150
2013	3/7/77	450	150
2067	3/14/77	375	150
2076	3/21/77	375	150
2083	3/28/77	375	150
Total		3375	1200

Clarence Clarke

Check No.	Date	Salary	Expenses
1951	2/7/77	150	150
1962	2/14/77	150	150
1985	2/18/77	150	150
2002	2/20/77	150	150
2014	3/7/77	150	150
2069	3/14/77	150	150
2077	3/21/77	150	150
2084	3/28/77	150	150
2105	3/25/77	600	
Total		1800	1200

5. With respect to the period February 7, 1977 to March 28, 1977, said records indicate payments to other individuals as follows:

	Salary	Expenses
Ronald Kremens	1341	800
John Gonzalez	2594	1040
Peter DeVuone	1256	536
Annie Craig	1400	
Linda Frank	770	
Marie Shannon	1050	
Michelle Pellegrito	540	
Mary Schmitt	550	

Joseph Kissane

JOSEPH KISSANE

Subscribed and sworn before me
this 6th day of April, 1977.

Manuel del Valle

NOTARY PUBLIC

MANUEL del VALLE
NOTARY PUBLIC, State of New York
No. 31-4603086
Qualified in New York County
Commission Expires March 30, 19 77

ORDER TO SHOW CAUSE WHY CERTAIN DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT, FOR THE APPOINTMENT OF A RECEIVER AND FOR OTHER RELIEF

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Rosenzweig
pm 16

Ray Marshall, Secretary of Labor of the United States

Plaintiff,

vs.

George Snyder, Rosario Albano, George Arth, Anthony Calagna, Clarence Clarke, Irving Conviser, Joseph Grippo, James Isola, James Kant, Sol Lipshitz, Benjamin Petcove, Irving Rosenzweig, William Snyder, General Teamsters Industrial Employees, Local 806 and 806 Record Processors, Inc., a New York Corporation,

Defendants.

Civil Action No. 77C 116

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D.N.Y.
☆ APR 8 1977 ☆
TIME A.M.
P.M.

ORDER TO SHOW CAUSE

TP16 - ad. [illegible]
[illegible]

Upon consideration of Plaintiff's Petition for an order to show cause why certain defendants should not be held in contempt, why an interim receiver should not be appointed and why certain amendments to this Court's order of February 4, 1977, should not be made, it is hereby

ORDERED that each defendant who is presently a trustee of the Local 806 Health and Welfare Plan, the Local 806 Pension Plan, or the Local 806 Annunity Plan or who has been a trustee of any of such plans at any time on or after February 4, 1977; each defendant who is an officer or director of 806 Record Processors, Inc. or who has been an officer or director of Record Processors, Inc. at any time on or after February 4, 1977; each defendant who was permitted under the order of February 4, 1977 to continue to receive salary payments for services actually rendered: and Record Processors, Inc. appear before this Court at 4:30 P.m. on Apr. 11, 1977, to show cause, if any there be, why they should not be held in contempt of this Court for violation of the Order of February 4, 1977;

IT IS FURTHER ORDERED that all defendants appear before this Court on the aforementioned time and date to show cause, if any there be, why a receiver should not be appointed to manage and control all income, assets and disbursements of Local 806 Health and Welfare Plan, Local 806 Pension Plan, Local 806 Annunity Plan and 806 Record Processors, Inc.; and

~~IT IS FURTHER ORDERED that all defendants desiring to answer the allegations of plaintiff's petition for this order serve their answers or other responsive pleadings to plaintiff's petition on plaintiff on or before ____________, 1977; and~~

cf
SDJ

~~IT IS FURTHER ORDERED that this Court's Order of February 4, 1977, be and hereby is amended so as to prohibit immediately upon their actual notice of this order and until the hearing to be held on __________, 1977, the making or receipt of any payment by defendant 806 Record Processors, Inc., for whatever reason, to defendants Anthony Calagna, Clarence Clarke, James Tsola and William Snyder. In all other respects, said order is to remain in full force and effect.~~

IT IS FURTHER ORDERED that the Office of the United States Marshall deliver forthwith a copy of this order and the petition on which it is based to the offices of defendants at 275 Broadhollow Road, Melville, New York. Plaintiff shall forthwith deliver additional certified copies of this order and the petition to the offices of counsel for all defendants.

ORDERED this 8th day of April, 1977. 11:50 AM.

George C Pratt
U.S.D. JUDGE

Service of this order and supporting petition and affidavits to be made by delivering upon offices/attorneys for defendants by 5:00 PM Apr 4, 1977.

George C Pratt
USDJ.

A TRUE COPY
ATTEST
DATED 4/8 1977
LEWIS ORGEL
CLERK
BY
DEPUTY CLERK

AFFIDAVIT OF HERBERT A. SIMON, ESQ., FOR DEFENDANTS 806 RECORD PROCESSORS, INC. AND GENERAL TEAMSTERS INDUSTRIAL UNION, LOCAL 806, IN OPPOSITION TO PETITION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RAY MARSHALL, SECRETARY OF LABOR
OF THE UNITED STATES,

Plaintiff,

-v-

GEORGE SNYDER, ROSARIO ALBANO, GEORGE ARTH, ANTHONY CALAGNA, CLARENCE CLARKE, IRVING CONVISER, JOSEPH GRIPPO, JAMES ISOLA, JAMES KANT, SOL LIPSHITZ, BENJAMIN PETCOVE, IRVING ROSENZWEIG, WILLIAM SNYDER, GENERAL TEAMSTERS INDUSTRIAL EMPLOYEES LOCAL 806 and 806 RECORD PROCESSORS INC., a New York Corporation,

Defendants

CIVIL ACTION NO. 77C 116

STATE OF NEW YORK)
COUNTY OF NASSAU)

HERBERT A. SIMON, being duly sworn deposes and says:

I am an Attorney at law duly admitted to practice in the United States District Court for the Eastern District of New York. I am the Attorney for the Defendants, 806 Record Processors, Inc. and General Teamsters Industrial Union, Local 806. I maintain an office for the practice of law at 99 West Hawthorne Avenue, Valley Stream, New York.

I make this Affidavit in reply and in opposition to the application of Plaintiff's Counsel wherein it is alleged that Defendant

806 Record Processors, Inc. is violating the Consent Order of February 4, 1977 and that 806 Record Processors Inc. has failed to produce documentation necessary for its discovery procedures.

At the outset I wish to take exception to the misleading and irresponsible statement set forth in Counsel's Petition at page 2, paragraph 1(b), "Creation of a sham corporation ......" and also the statement in paragraph 17 that I declined to permit an agent for the Secretary of Labor to inspect certain records for in fact deponent told Ms. Calfee to have her representative at the 806 Record Processors, Inc. office at 2:30 P.M. on April 7, 1977.

The Petition indicates and the Moving Affidavit states this action was commenced by the filing of a Summons and Complaint on January 20, 1977, (actually Friday, January 21, 1977), and at about the same time motion for preliminary relief was also served upon the named Defendants.

The Complaint in essence alleges violation of the ERISA statute in three specific areas.

1. Inordinate payments to George Snyder.
2. The making of a "loan" by 806 Record Processers, Inc. to General Teamsters Local 806.
3. An inordinate expenditure by the Pension Fund Trustees for the construction and furnishing of an office at 275 Broad Hollow Road, Melville, Suffolk County, New York.

Prior to the commencing of this action by the government one Joseph Kissane in the early part of November, 1976 contacted the 806 offices and advised representatives as well as deponent that he wished to examine the books and records of the Union and the fringe benefit funds to verify the content of the reports filed by said entities for the previous fiscal years. His examination began in mid November, 1976 and he was granted access to all books and records requested by him. He was permitted over noted objection by deponent to examine the books and records of 806 Record Processors, Inc. for the Welfare Fund as the sole stockholder was entitled to financial details of its operations. During the week of January 3, 1977, Kissane set an appointment with deponent for January 17, 1977 at which time I would produce for Mr. Kissane all relevant information concerning the corporate entity as well as the prepayed legal program established for the members and beneficiaries by the Welfare Fund. Deponent was unable to keep the appointment of the 17th of January, 1977, due to a snowstorm and we agreed to meet at the 806 office on January 20, 1977. On Wednesday, January 19, 1977 my office was advised that the appointment can not be kept and a new day will be arranged.

During the course of Mr. Kissane's examination he examined into every aspect of the operations of the Union, the Corporation and the fringe benefit fund but unfortunately did not complete his examination for your deponent submits a substantial portion of this litigation would have been avoided. Your deponent as well as every other Defendant in this action was at no time confronted by any allegation of purported wrong doing prior to the commencement of this action.

Your deponent in 27 years of practice of law involving various federal agencies has never been involved in a lawsuit or proceeding in which notice of the issues and allegations had not been first discussed prior to the commencing of an action or proceeding.

The devious methods used by the government in this case is exemplified by the fact that two items questioned in the Complaint appeared in the D2 form filed on behalf of the Health and Welfare Fund with the Department of Labor on March 2, 1976, that is the salary payments to George Snyder and the acquistion of the stock of 806 Record Processors, Inc. Salary payments to George Snyder also appear in the Pension Fund report filed November 26, 1975. At no time prior to Mr. Kissane making his initial appointment to examine the books and records of the various entities/ did he inform deponent or any other individual that the Department of Labor was disturbed by the items in the reports indicating high salary payments to George Snyder, and the disbursement of $300,000.00 to acquire the stock of 806 Record Processors, Inc.

Your deponent was first advised of this action upon reading a newspaper report on Saturday morning, January 21, 1977, and for the first time saw the content of the Complaint and motion for preliminary relief on Monday, January 24, 1977. I, thereafter, contacted government

Counsel by telephone and as a result of several ensuing phone calls agreement was reached concerning the terms of a Consent Order. In my conversation with Ms. Calfee I made it clear to her that the most important aspect of this proceeding at this time was to avoid any disturbance to the smooth functioning of the benefit funds operations which service in excess of 5000 people including members and beneficiaries through employment in more than 200 plants and shops under contract with the Union. I pointed out that four of the named Defendants were employees of 806 Record Processors, Inc. which is the entity responsible for servicing the members and their beneficiaries in the plants and shops and therefore the Consent Order must retain their payroll arrangement. This was agreeable to Ms. Calfee and when I informed her of the salaries which had been established in January, 1977 prior to this commencement of this action she stated that was not her information and after exhibiting to her the salary stubs for 1977 she agreed to the schedule set forth in the Consent Order.

Your deponent submits that the salaries and expense allowances received by the Defendants Calagna, Isola, W. Snyder and Clarke are for the services they render to 806 Record Processors, Inc., as field representatives. Their services are vital to the efficient servicing of the Funds by 806 Record Processors, Inc. that is a single functioning organization to maintain the necessary recordkeeping for members and their beneficiaries as well as keep the members in the plants and shops aware of the benefit rights and to maintain contact with Employer contributors concerning matters involving contributions and their timeliness. The function of 806 Record Processors, Inc. is in essence to service the fringe benefit funds with respect to contribution and application of approximately $2,000,000.00 in annual contributions to be utilized for health and welfare, pension and severance benefits. (Annexed hereto Exhibits A1 and A2 are the descriptive functions of 806 Record Processors Personnel).

Your deponent submits that the Consent Order established a status quo condition and stayed all payments of the nature complained of in the Complaint. Record Processors is concerned with providing the service for which it receives a monthly fee and it has been providing this service efficiently and properly. The government
as to Record Processors
Complaint/is concerned solely with the "loan" transaction and your deponent submits that the Answer of 806 Record Processors, Inc. as well as the documents produced fully establishs the facts and issues which are the subject of the government's Complaint.

Deponent submits that the government consented to the interim order fully aware or could have been more totally aware if it had not prematurely commenced this action, of all the facts of 806 Record Processors, Inc. and its function.

Your deponent submits that there is no need to vacate the

Consent Order or invoke any further remedy pending the trial and determination of this matter. It is respectfully requested that the Petition be dismissed.

DATED: Valley Stream, New York
April 11, 1977

HERBERT A. SIMON

Sworn to before me this
11th day of April, 1977

Martin L. Milner
NOTARY PUBLIC
MARTIN L. MILNER
No. 24-4645363
QUALIFIED IN KINGS COUNTY
COMMISSION EXPIRES MARCH 30, 1979

EXHIBIT "A1" TO SIMON AFFIDAVIT - DESCRIPTIVE FUNCTIONS OF 806 RECORD PROCESSORS FIELD PERSONNEL

806 RECORD PROCESSORS INC.
DUTIES OF FIELD PERSONNEL

I. Field Personnel are required to visit the premises of employers who are contributors to the Local 806 Welfare Fund or Local 806 Pension Fund.

(a) On such visitation Field Personnel shall inquire and determine if there are any new employees in the bargaining unit and if any employee had terminated from the bargaining unit.

(b) Field Personnel shall be provided with a list indicating the name of each employee in the bargaining unit and such list shall reflect the required contributions for Welfare and Pension. Such list also to include number of dependents.

(c) Field Personnel to be provided with a list of personnel in each shop indicating the accumulated service credit of each employee covered by the Pension Fund and such list shall provide for the entry of data covering a 12 month period relating to service credit.

(d) Field Personnel to be kept advised as to the deliquency status of the contributing employees and such personnel cannot permit any deliquency to extend beyond 60 days.

(e) Field Personnel will provide applications and claim forms for the purpose of receiving benefits to covered employees.

II. Field Personnel will distribute all relevant data and information published for and on behalf of the Welfare and Pension Funds.

III. Field Personnel will submit reports concerning the status of each shop as to additions or subtractions from the bargaining unit and information concerning pendency of coverage for new employees.

IV. Field Personnel will become familiar with the schedule of benefits and will provide information and answers concerning such benefits to covered employees.

(a) Field Personnel will not approve or disapprove of the allowance of benefits, such determination shall be made by the person or persons designated to make such decisions by the Welfare and Pension Funds.

EXHIBIT "A2" TO SIMON AFFIDAVIT - DESCRIPTIVE FUNCTIONS OF 806 RECORD PROCESSORS CLERICAL PERSONNEL

RECORD PROCESSORS INC.
DUTIES OF CLERICAL
PERSONNEL

I. Clerical Personnel shall perform all necessary duties relative to maintaining Welfare and Pension Funds records pertinent to their operation in carrying out the Welfare and Pension Plans.

(a) They shall receive contributions and credit such contributions on behalf of the specific contributing employer.

(1) They shall credit Pension contributions as to each covered employee and they shall credit Welfare contributions as to each covered employee.

(b) They shall examine claims, review supporting data and calculate allowance for Welfare Claims.

(1) They shall prepare necessary voucher for the purpose of issuing checks in payment of claim.

(2) They shall prepare necessary voucher for submission to insurance carrier with respect to insured benefits

(3) They shall prepare necessary voucher with respect to optical coverage.

[illegible] RECORD PROCESSORS INC.
DUTIES OF CLERICAL
PERSONNEL

(c) Clerical Personnel upon receipt of application for Pension Benefits shall prepare documentation relative to determining Pension Allowance.

  (1) They shall prepare on special voucher a statement of future service credit and based upon information provided by Social Security office calculation of past service credit.

  (2) They shall calculate the amount of Pension Benefit to be paid and submit all calculations and documentation to the Pension Fund Trustees for the purpose of final determination and approval.

(d) Clerical Personnel shall maintain the pertinent books and records for each of the Funds indicating the income and expenditures as well as recording the respective Fund's assets.

  (1) Corporate records relating to income and disbursements shall be maintained separately including payrolls and other necessary disbursements of operation.

SOS RECORD PROCESSORS INC.
DUTIES OF CLERICAL
PERSONNEL

(2) Benefit costs are to be charged directly to the Fund.

(3) Operation costs are to be charged to the Record Processing Corporation.

AFFIDAVIT OF ARTHUR D. FELSENFELD, ESQ., FOR DEFENDANTS ALBANO, ARTH, CALAGNA, CLARKE, CONOISER, GRIPPO, ISOLA, KANT, LIPSHITZ, PETCOVE AND W. SNYDER, IN OPPOSITION TO PETITION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---x

F. RAY MARSHALL, Secretary of Labor of the United States,

Plaintiff,

-against-

GEORGE SNYDER, et al.,

Defendants.

---x

Civil Action No. 77C 116

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ARTHUR D. FELSENFELD, being duly sworn, deposes and says:

1. I am an associate of the firm of Shea Gould Climenko & Casey, attorneys for defendants Rosario Albano, George Arth, Anthony Calagna, Clarence Clarke, Irving Conviser, Joseph Grippo, James Isola, James Kant, Sol Lipshitz, Benjamin Petcove and William Snyder. I make this affidavit in opposition to plaintiff's "Petition For An Order To Show Cause Why Certain Defendants Should Not Be Held In Contempt, For The Appointment Of A Receiver And For Other Relief."

2. Plaintiff's petition is premised upon purported noncompliance by certain defendants with the February 4, 1977 Consent Order approved by this Court. Having recently been substituted herein as attorneys for the above-named defendants, neither deponent nor deponent's law firm were involved in this litigation at the time the Consent Order was entered into. Nevertheless, it is readily apparent from a reading of plaintiff's papers, that plaintiff is now objecting to the very arrangement to which plaintiff agreed in the Consent Order.

3. The Consent Order provides in pertinent part:

> "that defendant 806 Record Processors, Inc. shall not hereafter make or permit to be made any direct or indirect payments for any purpose from its assets to defendant George Snyder, to any of the other individual defendants, to defendant Local 806, or for the benefit of any of said defendants; with the only exception that 806 Record Processors, Inc. may continue to make salary payments for services actually rendered to defendants Clarence Clarke, Anthony Calagna, James Isola and William Snyder. . . ."

Thus, plaintiff takes issue with the specific exception provided for in the Consent Order, and even goes so far as to characterize the exercise of said exception as a "violation of the Order."

4. Plaintiff does not suggest that the functions performed by the designated individuals have changed since the date of the Consent Order. Rather, plaintiff's objection revolves around the question of what constitutes work performed for defendant 806 Record Processors, Inc.

5. Plaintiff would have this Court believe that at the time it agreed to the Consent Order it was unaware of the relationship of 806 Record Processors, Inc. with the other entities involved herein and that it entered into the Consent Order without making any inquiry into the nature of said relationship. This position is ludicrous, particularly when one considers that in its complaint filed on January 20, 1977, prior to the date of the Consent Order, it alleged in substance that 806 Record Processors, Inc. was a sham corporation. Plaintiff, itself in paragraph 1 of its petition characterizes the pertinent allegations of its complaint, as follows:

> "(b), creation of a sham corporation, 806 Record Processors, Inc., through which assets of the plans have been diverted from their proper use to and for the benefit of Local 806 and its officers...."

In light of this belief it is incredible that plaintiff would now take the position that it did not inquire into the nature of the business of 806 Record Processors, Inc. prior to signing the Consent Order.

6. As is demonstrated in the affidavit of Herbert Simon, Esq. submitted in opposition to plaintiff's petition, 806 Record Processors, Inc. is not in fact a "sham corporation" but rather provides valuable services for the other entities involved. Indeed, it was for the purpose of maintaining said services that the specific exception referred to above was included in the Consent Order. The four designated individual defendants are quite properly compensated, in accordance with the Consent Order, for the performance of said services.

7. Plaintiff also contends that two of the individual defendants, Messrs. Clarke and Isola, receive payments in excess of the maximum amounts specified in the Consent Order, (i.e. maximum salaries of $300 and $825 per week, respectively). However, as is clear from the affidavit of Joseph Kissane, dated April 6, 1977, the salary payments to these individuals, even when added to their expense allowances, do not exceed the maximum salary payments specified in the Consent Order. In fact, in the case of Mr. Isola (as well as Messrs. Calagna and William Snyder) subsequent to March 14, 1977 the combined total of salary payments and expense allowance per week was substantially less than the maximum salary amounts prescribed. The additional

payments to Messrs. Clarke and Isola, reflected in Mr. Kissane's affidavit, are nothing more than accumulated vacation pay.

8. To support its claim of violations of the Consent Order (which, as demonstrated above, are not in fact violations) principle reliance is placed by plaintiff upon the testimony of Constance Mavroson and Annie Craig. However, construing their testimony most favorably to plaintiff, it only demonstrates their unfamiliarity with the functions performed for the entities involved beyond the clerical duties which they themselves perform. To the extent that Mrs. Mavroson had some knowledge of the concept of "servicing of shops," her testimony reveals that the services provided by individual defendants were indeed very extensive. (See, e.g. Mavroson Dep. Tr. at pp. 137-143).

9. Certainly the exercise by certain of the defendants of their Fifth Amendment rights cannot and should not be viewed as any indication whatsoever of wrongdoing or of Consent Order violations. The refusals to answer questions were the result of, and in response to, the 5th Amendment instructions given by plaintiff's attorneys regarding possible use of the testimony. The defendants' responses reflected the uncertainty of these defendants with the scope of plaintiff's inquiries, an uncertainty which has only been reinformed by the on-going investigation by plaintiff's representatives into areas beyond the scope of the complaint. After having advised certain defendants of their Fifth Amendment rights, plaintiff's attempt to use the exercise of such rights to defendants' prejudice is, to say the least, highly improper.

10. In response to Ms. Calfee's implicit accusations of defendants' attempts to delay discovery, it should be noted

that my firm was first substituted on March 17, 1977 to represent eleven of the individual defendants. To date, the depositions of only four of these individuals have been noticed, of whom three have been produced. The deposition of the fourth individual, Clarence Clarke, was adjourned with Ms. Calfee's consent, as Mr. Clarke was in Florida. Upon the adjournment of Mr. Clarke's deposition, and at Ms. Calfee's specific request I agreed to produce Mr. Joseph Grippo, despite the fact that his deposition had never even been noticed. However, Ms. Calfee later disclaimed any such agreement and, notwithstanding her prior consent, raised objections to Mr. Clarke's non-appearance. However, Ms. Calfee's statements on the record on March 30, 1977 belie her current position:

> "MS. CALFEE: Last week when it was informally indicated, I believe, that Mr. Clarke could not appear, we tried to arrange an alternative, and Mr. Grippo had been suggested as an alternative." (Isola Dep. Tr. at p. 11).

11. Finally, I am compelled to respond to the representation made by Ms. Calfee, in paragraph 18 of her affidavit, that she attempted to resolve the instant controversy with me before seeking relief from this Court.

12. The only matter which Ms. Calfee discussed with me was the objection raised concerning the nature of the services performed by Messrs. Calagna, Isola, Clarke and W. Snyder. No mention was made by her of the contention that certain individuals were receiving payments in excess of the amounts prescribed by the Consent Order. Had this latter question been raised, it would have been easily explained and resolved, as is demonstrated above.

13. In any event, on April 7, 1977 in response to the objection raised regarding services performed for 806 Record Processors, Inc., I stated to Ms. Calfee that I believed the matter could be voluntarily resolved, but that Herbert Simon's participation would be necessary, inasmuch as Mr. Simon was counsel for the entities directly involved, i.e. 806 Record Processors, Inc. and Local 806. I suggested that a conference or a conference call be arranged to discuss the matter.

14. Ms. Calfee stated that she would call Mr. Simon and get back to me. However, the next communication I received from Ms. Calfee was the instant petition which was served on my office the very next day.

15. It is therefore clear that Ms. Calfee's telephone conversation with me regarding settlement was contrived for the sole purpose of permitting her to state in an affidavit that she had discussed the matter of voluntary resolution of plaintiff's objections with opposing counsel. This formality having been accomplished, the effort towards settlement was abandoned.

16. On the basis of the foregoing, deponent respectfully requests that plaintiff's petition be denied.

Arthur D. Felsenfeld

ARTHUR D. FELSENFELD

Sworn to before me this
11th day of April, 1977.

Alice Manos

Notary Public

ALICE MANOS
Notary Public, State of New York
No. 24-7702940
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

-----------------------------------x

MARSHALL, :

Plaintiff, :

-against- :

SNYDER, :

Defendant. :

-----------------------------------x

United States Courthouse
Brooklyn, New York

April 21, 1977
10:00 o'clock A.M.

MLOCK
ASABLE
CONTENT

Before:

HONORABLE GEORGE PRATT, J.S.D.J.

HENRI LEGENDRE
ACTING OFFICIAL COURT REPORTER

Appearances:

Attorneys for Plaintiff - Secretary of Labor

MARY S. CALFEE, ESQ.
SHERWIN S. KAPLAN, ESQ.
MONICA GALLAGHER, ESQ.

Attorneys for Defendants

ARTHUR D. FELSENFELD, ESQ.
HERBERT A. SIMON, ESQ.
CHARLES F. MURPHY, ESQ.

(Whereupon counsel noted their appearances on the record.)

MR. KAPLAN: Your Honor, the plaintiff would also like to make an opening statement at this stage.

THE COURT: All right. I'll hear first from the plaintiff.

MR. KAPLAN: Thank you, your Honor.

Briefly, your Honor, the plaintiff in this case is the United States Secretary of Labor, the defendants consist of past and present trustees of three employee benefit plans, a labor union and an entity called Record Processors, Inc. which we'll refer to as RPI.

THE COURT: I've read all the papers. Tell me what you're going to do today.

MR. KAPLAN: It is our contention, your Honor, that the consent order entered into by the parties on February 4, 1977, which prohibited defendants from using plan assets either directly or indirectly through RPI for the benefit of the union. Specifically, the order stated that neither the fund nor RPI shall make or permit to be made any direct or indirect payments for any purpose to Local 806 or for the benefit of that Local. It is our contention that the Welfare and Pension Plans are in fact supporting and subsidizing the activities of 806 by funneling the assets through RPI.

In that order there was one exception to the prohibition of payments and that allowed payments to four individuals for services actually rendered for RPI.

We feel that these individuals are rendering services for the union and not for RPI; that other individuals on the payroll of RPI are also rendering services for the union and not for RPI. Because of the circumstances of this case, among other things include defendants' failure to make records available as the order required, the refusal of certain individuals in the best position to allow themselves to be deposed. Plaintiffs' proof today will be primarily circumstantial. We intend to show a labor union with approximately 2,100 dues payment and bargaining agreements in effect has only one full time paid employee and that person is an office manager.

We also intend to show that a pension plan which has only three pension application filed during the time this order has been in effect, only 74 people on pension and approximately 14 applications for pension filed in the last year, and a welfare plan all of whose claims are processed primarily by one individual; that these plans somehow support six or seven full time field representatives, all of whom, your Honor, are either officers or have titles such as field representatives with the labor union; that these field representatives supposedly -- in fact paid by RPI, supposedly working for RPI, in fact constantly visit the shops of the union, are the people primarily involved doing whatever business the union is doing. It's our prime contention, your Honor, that it stretches perpetuity that the primary purpose of all of this activity on the part of these individuals is for the benefit of the plans and to work for RPI and not to work for the union.

We will reserve any further discussions about remedies for later unless your Honor would care to hear that at this time.

THE COURT: Before we get to that. Mr. Murphy claims I don't have jurisdiction. Is there any merit to that?

MR. KAPLAN: No, your Honor, there is not.

THE COURT: All right, I'll hear from Mr. Murphy on that -- all right, Mr. Felsenfeld.

MR. FELSENFELD: Yes, your Honor. Your Honor, with regard to some of the claims made by Mr. Kaplan I believe the testimony of four individuals involved will suffice to rebut his assertions.

THE COURT: Are they going to take the Fifth again?

MR. FELSENFELD: I don't plan that they will, and let me address myself to that.

THE COURT: I consider one of the key questions is what do they do for the union, what do they do for the fund?

MR. FELSENFELD: Exactly.

THE COURT: Okay.

MR. FELSENFELD: At our last conference it was my understanding when leaving the conference that the purposes of this hearing was to determine the activities and services performed by four named individuals as employees of record processing, and what services they performed as such for the fund.

Subsequent to that conference, and in fact during the past few days I should point out that all the clerical employees associated with the four entities involved were served with subpoenas and requests were made for virtually all of the documents, not only of 806 Record Processing, Inc. but all of the three other entities as well.

It appears clear that the plaintiffs are trying to expand this hearing well beyond the scope of the understanding at the conference, I believe it was on April 11th. I believe that the question that is the basis of todays hearing can be answered most expeditiously and sufficiently by having these four individuals testify as to the services they perform as employees for Local 806, record processing, and in fact you may recall, your Honor, at that conference you asked me whether there'd be any problem with regard to these four people coming in to testify and I answered that as long as the hearing as I understand it is restricted to the question of the services they performed for 806, Record Processing, Inc. I would have no problem; and I think the question posed for today's hearing could be answered by having these people testify on that question, and I don't think there is anyneed for all of the clerical employees of all of the entities and all of the books and records of all of the entities be brought before this Court.

In fact I should note in plaintiffs' memorandum which I received late yesterday afternoon, they themselves recognize that the testimony of these four individuals, they are in the best position, through their testimony, to shed light on whether and to what extent they are actually rendering services to RPI, and those are the only statements that I would like to make at this time.

I think that the hearing today should be restricted to that question. Thank you.

THE COURT: Are you suggesting that I only listen to the testimony of your four clients?

MR. FELSENFELD: No, I'm not. I think that their testimony should be brought out and if your Honor believes that certain additional facts are necessary for you to render a decision with respect to the plaintiffs' petition then additional testimony will be given, but I think first with regard to these four individuals I believe there was a clear understanding that their testimony would be restricted to the question of the services that they performed as employees of 806, RPI; and I also believe that there was a clear understanding that that was the nature and the scope of this evidentiary hearing.

THE COURT: I don't recall any such understanding, counselor. How can you determine whether the salary they have been paid for services actually rendered without getting some view on the total compensation they received, both from the union and from the fund when they are performing services apparently, at least according to the plaintiff claim, both for the union and the fund.

MR. FELSENFELD: I would have no problem as to inquiry as to any salaries they received from the union, and there is no dispute as to the actual salaries. The only salaries they do receive, these are actual salary payments. The only ones they do receive is from 806, RPI.

THE COURT: Well, the evidence will develop, I'm sure.

MR. FELSENFELD: Thank you.

THE COURT: Mr. Simon.

MR. SIMON: It was my understanding that this proceeding was to be a rather limited one in that we have a consent order here that I in good faith believe we entered into so that we can continue to act in the manner we had been proceeding, and I'm talking about the record processors, which in essence handled all of the day to day activities of these funds.

We have been served with subpoenas seeking vast amounts of information and vast amounts of documents. We have been discussing stipulations which go to the heart and merit of this entire proceeding, and, frankly, at this stage I'm not prepared to go into the heart of this entire proceeding. I say, yes, we are here concerning this issue that has arisen with respect to what these four men are doing, because they happen to be defendants, and when we entered into this order I noted to counsel for the plaintiff that you have four people here who are on this payroll and they are performing work for this Record Processors, this is their salary, and this is what they are being paid. They are performing work. We just can't cut them off, and it was agreed that they are performing work, they shall continue to be paid and this is the order that we are talking about.

Now, something was said here about our not making records available. I say to you, sir, that is a misrepresentation to this Court, an absolute misrepresentation to this Court. On every occasion that the representative of the plaintiff thought to come into the premises and see records and spend time looking over records he did that, he did whatever he had to and we complied with that order to the very essence.

THE COURT: This may be one of the issues I have to hear.

MR. SIMON: And the very last day before they came in here while they were preparing the order to show cause in this matter, they came to us, Miss Calfee had called me about 2:30 in the afternoon and wanted to know about Mr. Kazane coming in the next day to bring his report up to date. We had some argument -- it happens between opposing counsel -- and she said well, we have the right to be in within 24 hours.

I told her I didn't know whether we could accommodate her. Nobody appeared and I so informed her. If somebody did appear within those 24 hours those records would have been available, and by the way, sir, they were at the union all day yesterday and they have those records now. So there has been no attempt to violate this order at any time. We do have differences, of course we do, and I think, your Honor mentioned something about jurisdiction.

THE COURT: Mr. Murphy raised the point.

MR. SIMON: Was it Mr. Murphy or myself who made the point?

THE COURT: He's the first one I ran across in the papers.

MR. SIMON: When I'm talking about Record Processors I'm talking about jurisdiction, because Record Processors in my estimation is not an entity within the purview of the act.

THE COURT: It's wholly owned by the trustees of the plan.

MR. SIMON: The stock is held by the trustees.

THE COURT: Who are the directors?

MR. SIMON: Mr. Petcove and Mr. Calagna.

THE COURT: Are they trustees?

MR. SIMON: Not of the Welfare Plan. Mr. Calagna is the president of the local union.

THE COURT: How about the officers?

MR. SIMON: Mr. Petcove and Mr. Calagna are the officers also.

THE COURT: All right. Well, I'm not going to rule summarily on that question.

MR. SIMON: It goes to the heart of this matter. I say to your Honor as Mr. Felsenfeld who actually represents these clients, these four individuals, he indicated they will testify as to their duties when they are in the field, and when they are in the office concerning welfare and pension problems as well as other fringe problems, and I think as the testimony develops you will see that they certainly utilize a substantial portion of their time to this.

There are legal questions concerning the application of this law. I think you have Mr. Clarke here. Mr. Clarke is a judiciary, he receives no salary from the union. He's a trustee of the Pension Fund and under the law he can receive no fulltime salary from any other entity if he's receiving a full time salary from the Pension Fund.

Now, he has been receiving what constitutes a fulltime salary from the Pension Fund and a partial salary from the Record Processors Corporation. He was at the time of the consent order, he was taken off the Pension Fund salary and he's continued to receive the Record Processors salary, but certainly his duties have nothing to do with the union. And I say summarily, almost, that there is nothing, there is no issue with respect to him under the statute.

The others will certainly have to testify and they are prepared to testify, I understand as to their duties and functions with regard to the problems which exist within a pension welfare fund.

I submitted to your HOnor a short memorandum, I trust you received it.

THE COURT: Yes, I received that yesterday.

MR. SIMON: I tried to outline how the operation -- perhaps it can aid you, give some insight into the problems that we have here.

THE COURT: It already has.

MR. SIMON: Okay, sir.

THE COURT: All right, Mr. Simon, thank you.

Mr. Murphy?

MR. MURPHY: I have nothing to add to what my two associates have said. On the question of jurisdiction which the Court has referred to, we didn't come prepared today to argue that point of law. That point is being researched in my office now. If the Court would like a brief we would be only too happy to supply it.

THE COURT: If I don't have jurisdiction we are all wasting our time. Plaintiff's counsel said that there is no merit to your motion. I'm inclined to think if there were an overall jurisdictional problem here we wouldn't have all these people in the courtroom today. It would have been pressed long in advance of this point. I'm proceeding this morning, I'll be very disturbed if I come to the contrary conclusion and waste a day, but I will appreciate anything you can give me on the subject, Mr. Murphy.

MR. SIMON: I would think for the purpose of the consent order you do have jurisdiction. We are under the jurisdiction of that order.

THE COURT: That may be unless Judge Bramwell didn't have jurisdiction to sign the order.

MR. SIMON: We don't want to be in contempt of an order.

THE COURT: I have a lot of language in here that seems to bear pretty near to the problem. I suspect I will have jurisdiction.

Mr. Kaplan, your first witness.

MR. KAPLAN: Your Honor, Miss Calfee will examine.

THE COURT: Proceed.

STANLEY A. GELLER, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MS. CALFEE:

Q What is your occupation?

A I'm a Certified Public Accountant.

Q Mr. Geller, are you employed or otherwise compensated by any other of the Local 806 entities?

A Yes. I receive fees from these entities for my services.

Q Specifically which entities do you receive fees from?

A From Local 806; from Local 806 Health and Welfare Fund; from Local 806 Pension and Retirement Fund; from Local 806 Annuity Fund; and from Local 806 Record Processors, Incorporated.

Q Can you please describe, sir, what your functions are with respect to these entities?

A I'm employed as their accountant. My duties consist of primarily preparing annual reports, seeing that the office functions in a proper manner and to assist the various trustees and officers in preparing their financial reports.

(Continued on next page)

Geller-direct

Q Could you please describe the office arrangements of these entities? Where are the offices?

A They are located at 275 Broad Hollow Road in Melville.

Q Could you please describe the office arrangements?

A I don't understand the question.

THE COURT: Physical layout, who uses what part of the offices, and so forth.

A (Continuing) To my knowledge, there is no one specific area that any particular one of these entities occupy? There is no nomenclature on any of the rooms or any of the parts of the general office that indicate where any of these various funds or local would occupy. It is a large office with offices within it, consist of a number of offices; a larger general office, conference room, reception area. To my knowledge, there is no one entity that occupies any one particular space.

Q You indicated that you have certain responsibilities respecting the functioning of the office. Can you describe what those responsibilities are?

A Let me just make something evident. As a Certified Public Accountant I am not directly responsible for supervising any of the funds directly. That would destroy my independent function as an accountant. However, I try to assist in discussing with the officials if I find any areas that might need improvement, but I am not directly responsible for the particular day-to-day or month-to-month functioning of any of the funds or the union.

Q Is it fair to say that you have some familiarity with the day-to-day operation of the various entities?

A Yes.

Q You mentioned that you have some responsibility in connection with the books of the corporation, 806, RPI. Could you describe where this corporation gets its income?

A Yes, the corporation received its income from Local 806, Teamsters Health & Welfare Fund, and from Local 806 Teamsters Pension and Retirement Fund.

Q Can you describe the amount of income it receives?

A Currently it's receiving $3,000 from the pension fund and $25,000 from the welfare fund on a monthly basis.

Q Could you describe, to the best of your knowledge, what it does to earn this income?

A Yes. It maintains all the records of both funds; it employs personnel to handle all administrative and claims processers of both funds, and incidentally also for the annuity fund which does not contribute any source of income to record processes. It, as I said, administers all claims and effectuates the collection of monies due from employers from the various funds. Therefore, it is responsible, really, for the collection of the money going into the fund and the processing of all funds and the disbursements of all funds -- for the three funds.

Q Do you know who owns this corporation?

MR. SIMON: I object to the legal conclusion as to "owns." I think it's a question of stock ownership.

THE COURT: You told me that the Trustees -- I am not sure which fund.

MR. SIMON: The welfare funds are the holders of all the issued stocks.

THE COURT: Is there an issue as to that?

MS. CALFEE: That was my question, your Honor.

THE COURT: It's agreed the Trustees of the Health and Welfare Fund own 100 per cent of the stock of RPI.

Q Do you know who the Directors of that fund are?

A I heard this morning Mr. Petkov and Mr. Calagna.

MR. SIMON: Counsel said funds and I think she meant corporation.

MS. CALFEE: I'm sorry. I'm speaking of the corporation.

THE WITNESS: I answered the question.

Q That's right.

Do you know who the employees of RPI are?

A By name?

Q Yes.

A Well, there are quite a considerable number I can give you most of my knowledge. I may forget some. I don't have any reference right now, but would you like me to state their names?

Q Yes, would you please?

First, could you describe who the employees are who work in the office?

A To properly answer that I think if I had some material in front of me I might be able to properly give you an answer. I understand that one of the books are here. If I acquainted myself with the payroll record I would give you [illegible] answer.

MS. CALFEE: We subpoenaed the payroll records of RPI. May we call for the production now?

THE COURT: Where are they?

Why don't you get the records that you need, Mr. Geller?

THE WITNESS: I will.

Geller-direct

THE COURT: Your question is as to who are the present employees; is that correct?

MS. CALFEE: That is correct, your Honor; who are the present employees and who have been employees of RPI from and after February 4, 1976.

THE COURT: Let's start with what the present situation is and then we'll see whether there have been any changes.

THE WITNESS: Present employees in the office are Ann Craig, Linda Frank, Marie Shannon, Mary Schmidt. Those are the individuals in the office. There is in addition to that working in the office Constance Mabroson who is not employed by 806 record processers. There is also Mr. Devono, who I understand, I've seen him working at times in the office.

THE COURT: Do the four that you mentioned have any titles?

THE WITNESS: No, they are office employees.

THE COURT: Clerical help?

THE WITNESS: Yes.

THE COURT: Has that changed? Has that situation changed since February 4th of this year?

THE WITNESS: I do not believe so, your Honor. The only change is that there is one employee who was in the office in February who is no longer employed and has not been replaced at this time.

THE COURT: Who was that?

THE WITNESS: That was a Michel Pelegrino.

THE COURT: When did she leave?

THE WITNESS: About that time, some time in February.

THE COURT: All right.

BY MS. CALFEE:

Q Are there other employees of 806, RPI?

A Yes.

Q Will you please tell me who they are?

A Anthony Calagna, James Isola, William Snyder, Clarence Clark, John Gonzalez. I believe that constitutes the number of employees.

Q Have there been any other employees?

A There is one other employee who I believe has terminated his employment.

Q And who would that be?

A And that is Ronald Cremmins (phonetic).

Q But he was employed after February 4, 1977?

A Yes. And he has not been replaced.

THE COURT: This last group you are giving me are field representatives?

THE WITNESS: Yes, sir.

THE COURT: All right, Ms. Calfee.

BY MS. CALFEE:

Q Mr. Geller, who are the present officers of the union?

A Again, I have to have some material in order to be able to give you an answer to that to give you all the officers.

MR. FELSENFELD: Based on our stipulation yesterday we can stipulate to that.

THE COURT: Who are they?

MR. FELSENFELD: We have Anthony Calagna, President; James Isola, Vice President.

MS. CALFEE: We sought to stipulate to certain things yesterday and was not successful.

MR. SIMON: I object to that remark.

MR. FELSENFELD: We certainly did stipulate to that.

THE COURT: If there is a stipulation, read it into the record.

MS. CALFEE: Okay. As I understand it, the defendants are presently willing to stipulate that the present officers are Anthony Calagna, President; James Isola, Vice President; George Snyder, Secretary-

Treasurer; John Gonzalez, Rosario Albano and George Harth are Trustees of the union and not the plans.

THE COURT: Gonzalez, Albano and who was the third?

MS. CALFEE: George Harth.

Q If I understand your testimony, Mr. Geller, Mr. Crimmins is no longer employed?

A This I cannot give you an exact answer on. I believe I was told that information. I see that he is employed as of April 4th. I do not know if his employment has terminated. I think you can get that information from someone else as to the exact information.

Q Do you know at the time of his employment whether he was an officer of the union?

A No, he was not.

Q Will you describe the present relation between RPI and the union?

A I don't understand the question.

Q As I understand it, your testimony was that they share a common office space.

A Yes.

Q Now, could you characterize the relationship between RPI and the union?

A The union, of course, occupies space within the general office at 275 Broad Hollow Road, employees of Record Processes do administer certain functions for the union as to clerical functions for the union. At the same time, Mrs. Mavroson who is employed by the union does functions for all of these various entities. What has developed since, over the past years is that most of the duties are shared duties of these employees with the exception of Ms. Craig who is employed basically in a claims capacity, who has extensive claims and medical knowledge and does work primarily in welfare claims at the office.

Other than Miss Craig, most of the other employees in the office do not have any specific identifiable duties relating to anyone of the entities. They will do general work in connection with all of them.

Q That general work, then, includes work for the corporation, Record Processors?

A Yes.

Q And work for the plans?

A Yes.

Q And work for the union.

A Yes. I must state, however, that the work is not -- in other words, it is not an equal part -- I wish to later inform you that the work for the welfare fund constitutes the majority in the primary job for most of these employees. The work for the pension fund occupies a considerable amount of time; the work for the annuity fund and for the union occupies the least amount of time.

Q Could you tell me, Mr. Geller, who is currently receiving salaries or wages from the union?

MR. FELSENFELD: I would have to object, your Honor. I understand thus far a lot of the questions I believe are beyond the scope of today's hearing, but I haven't raised any objection before because it's general background information, but it appears that we are going pretty far afield from what I believe the purpose of today's hearing is.

THE COURT: Limit your answer to the question to the named defendants in this case plus the other people whose names you have mentioned thus far in your testimony. Are any of these receiving salaries from the union?

THE WITNESS: Again, to answer that question properly you must understand I am not at the offices there on a day-to-day basis. As an accountant, I review what has transpired and what has happened. Again, without the material in front of me I can't properly give you an answer as to who is currently on the payroll at this particular point.

MS. CALFEE: I call for the production of the records of the union, payroll records of the union which we subpoenaed.

THE COURT: Are they here?

MR. SIMON: Yes.

THE COURT: Get whatever records you need.

THE WITNESS: Miss Calfee, to answer your question, do you mean who has been paid since February 4th or who is currently being paid this week?

Q I would like you first to answer who has been paid since February 4th; who has received income from the union?

A Constance Mavroson, George Harth and Rosario Albano.

Q Can you tell me what their salaries are?

A Yes, Constance Mavroson receives a salary of $320 per week; George Harth receives a salary of $125 per month; Rosario Albano, $125 a month; James Kant receives a salary of $400 a month, and those are the individuals who have received a salary since February 4th.

George Snyder is on the union payroll. He has not received any remuneration since that time.

Q You mentioned James Kant. Do you know what services he renders for the union?

A James Kant has retired. I don't know the exact date of the retirement, but the remuneration that Mr. Kant is receiving is for monies for back pay which the union has owed him over a considerable number of years, which he did not receive.

MS. CALFEE: Your Honor, I would like to have marked first the Record Processors, Inc. payroll as Government Exhibit 1.

MR. SIMON: I object, your Honor. That's irrelevant. The numbers are in the record and the testimony is here.

THE COURT: Is there additional --'

MR. SIMON: It's beyond the scope.

THE COURT: Is there data that you are trying to put in evidence or some question as to the witness' accuracy of interpretation?

MS. CALFEE: No, your Honor. If the witness' testimony is sufficient --

THE COURT: It's sufficient for my purposes.

MS. CALFEE: All right.

THE COURT: The objection will be sustained, at least at this point.

BY MS. CALFEE:

Q Mr. Geller, can you tell me what the yearly

Geller-direct

income from contributions for the welfare fund is?

MR. SIMON: I object. Immaterial to this proceeding.

THE COURT: Overruled.

A I can give you an approximate income for the last fiscal period.

Q Would you do that, please?

A In excess of one million dollars.

Q And from the pension fund, annual income?

A In excess of -- let me say approximately $300,000.

Q Mr. Geller, were you present at the joint offices of 856 fund yesterday?

A Yes, I was.

Q At that time, Mr. Geller, did Kazane (phonetic) request that you produce certain 1976 W-2 forms for the union and certain 1977 union payroll records?

MR. SIMON: I am going to object to this as immaterial and irrelevant to this proceeding, not within the terms of the consent order.

THE COURT: Why isn't it?

MR. SIMON: There is nothing about union records in the consent order, sir. It's the records of the fund.

THE COURT: How are the W-2 forms you referred to relevant to the issue before me?

MS. CALFEE: Your Honor, we will drop that issue for now.

THE COURT: All right.

BY MS. CALFEE:

Q Mr. Geller, were you an accountant for the Local 806 entities at that time pension fund assets were pledged as collateral for a loan to the union?

MR. SIMON: I object. Immaterial.

MR. FELSENFELD: I also object; matter of form. In addition to the objection as to relevance.

MR. SIMON: This is a matter that's an issue in the complaint.

THE COURT: I was going to say we aren't trying the issues of the main action here.

MS. CALFEE: That's correct.

THE COURT: How does this bear upon whether there was a violation of the consent order?

MS. CALFEE: We believe that this testimony goes to the question of whether or not in the past any of these have been invaded and what the appropriate remedy has been.

THE COURT: I was told the case would revolve

THE COURT: Well, I think, getting a little beyond what I need to determine the issues here. It may be that the evidence as it's finally completed may point out to me that I am going to need some more testimony on some aspects of it, but we have a picture here of a complaint with rather specific allegations with respect to at least three specific transactions. A motion for a preliminary injunction which resulted in a consent order. The steps that were taken following the consent order must be viewed in the light of the pending issues of the case which it is not my function on this motion, as I on circumstantial evidence. You are trying to get at a kind of similar act type of proof.

MS. CALFEE: Especially going to the question of remedy and the use to which RPI has been put.

MR. FELSENFELD: I would also suggest with respect to the comment that the evidence would go to circumstantial matters, that it need not if we get these four individuals who this hearing is about on the stand and have them testify as to the services they performed, and if you wish, the salaries that they have received from 806 Record Processing.

THE COURT: Well, I think, Miss Calfee, you are see it now, at least is not to prejudge the truth or falsity of the various claims made by the plaintiff.

In view of the specific claims that are made, they can't be ignored of interpreting what has happened since, but I am not going to get into trying out the merits of the complaint solely for the purpose of determining the intent. I don't think intent is warranted here except on the question of contempt. If I find that that aspect of intent is vital to reaching a conclusion, I can always re-open the hearing for that purpose, but you are going to open such a wide door there on the prior acts that I'm reluctant to get into it unless I have to. Let's find out what the other evidence shows first, and then we may come back to it.

MS. CALFEE: All right.

No further questions.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. SIMON:

Q Mr. Geller, you testified concerning income to the Record Processors Corporation. In addition to income, does RPI receive services for which it does not pay?

A Yes, it does.

Q Will you describe those services?

A It receives services, as I said, from Mrs. Mavroson.

Q And can you describe some of those services?

A You mean specifically what I've just enumerated or in addition to this? Mrs. Mavroson supervises the office. She's involved in all phases of the fund, the union, Record Processors, and as I've stated, she receives a salary solely from the union.

Q Does she aid in the keeping of books and records of Record Processors?

A Yes.

Q And does she oversee the entity of the making of entries concerning the books and records which apply to the benefit fund?

A Yes.

Q Do you have any estimate of the gross amount of time she utilizes for the benefit of Record Processors, and in turn the welfare and pension fund, and other funds?

A If I were to give you an idea on a percentage basis of the total time I would estimate that the welfare fund constitutes sixty per cent of working time; pension fund probably fifteen per cent -- I would say twenty per cent, and the union and annuity fund would constitute the balance of the time.

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Geller-cross

Q Now, sir, one other thing, you are the accountant for the union, can you indicate the gross income of the union during a fiscal year?

A If you just give me a moment I would be able to get that information. Total income last year for the local union was approximately $350,000.

Q You testified earlier that the gross income for the two funds was approximately a million three hundred thousand?

A Yes.

Q And also there is an annuity fund as well?

A Yes.

Q And about how much income does that have as gross income, do you know? I know it's not as great.

A I would have to check that, Mr. Simon.

Q The D-2 attached to the papers of the application for preliminary injunction indicated a $75,000 gross income which I think is probably greater -- that was for '75, I believe.

Is that a fair statement, Mr. Kaplan?

THE COURT: Would that be an approximation?

THE WITNESS: Yes.

Q Now, Mr. Geller, how is that, and I'm talking about welfare and pension fund and annuity income, do you

Geller-cross

know how that is generated?

A The income for these various funds are received from employers pursuant to collective bargaining agreements.

Q And in determing an affecting the rate of income is that -- and how does that come about, is that through the office of record processors or is it the office-- or do certain personnel seek to affect that income?

A Well, in the determination of what the rate of contributions should be and which are negotiated between the employer and the union which affect these particular funds, various personnal of record processors are directly involved in negotiations with the mployers to effectuate proper rates for the fund commensuarte with the benefits which are provided by the fund. Thse employees are employed by 806 record processors.

Q Now, Mr. Celler, you have been the accountant for RPI since its inception, correct?

A Yes.

Q Now, about the time of its inception, you were in contact with me concerning its manner of operation?

A Yes, sir.

Q And at about that time --

I would like to mark this for identification, your Honor.

THE CLERK: Several page documents marked for identification as Defendant's Exhibit A.

Q Mr. Geller, I show you copy of communication and some detachment papers, can you identify it?

A Yes, I have a copy of this which Mr. Simon mailed to my office at this time.

Q You have the original?

A Yes, I do.

Q Can you tell us what this is? Describe it.

A This is a letter from Mr. Simon's office to my office which details the scope of 806 record processes and also details the duties of the various employees of 806 record processes as to the scope of the corporation's activities.

Q Is this the same as the original that you received, Mr. Geller?

A Yes, it is.

Q And was that received about July 17, 1975?

A Yes.

MR. SIMON: I offer it in evidence.

THE COURT: Show it to counsel.

Is that the document that was attached to your opposing papers on the motion?

MR. SIMON: That's correct.

THE COURT: Is there an objection?

MS. CALFEE: The attachment to the record was the exhibit in the affidavit.

THE COURT: Yes.

Any objection?

MS. CALFEE: No.

THE CLERK: Defendant's Exhibit A received in evidence.

THE COURT: Proceed, Mr. Simon.

CROSS-EXAMINATION

BY MR. SIMON (continuing):

Q Now, Mr. Geller, you testified again concerning income for record processors, and you also testified concerning the occupancy of the office at 275 Broad Hollow Road. Did there come a time when you prepared an area allocation with respect to the occupancy at 275 Broad Hollow Road?

A Yes.

MR. SIMON: May I have this marked as an exhibit?

THE CLERK: One page document marked for Identification as Defendant's Exhibit B.

Q Now, Mr. Geller, I show you this photostat

Geller-cross

with some figures on it, can you tell us what that is?

A The document that I have in front of me was subpoenaed by myself, it has the total area of the premises occupied at 275 Broad Hollow Road. I attempted to prepare areas that were primarily used by the different entities at 275. As I have stated before there is no one specific room that applies to any one specific fund or union, however, there are some areas that are used more often in the general scope of these various funds or union, and under my direction I determined what the subdivided areas would be, and from that I broke down the total square footage to general specifics and determined a percentage ratio that I thought was fair and proper for each of the entities to be responsible for as far as a rental payment for the use of the premises.

THE COURT: When did you do this?

THE WITNESS: I don't have a date on this, your Honor. This was done a number of months after they first occupied the premises, because at the beginning there were still alterations and building work going on, and in the beginning when they first occupied the area at 275 Broad Hollow Road I really could not clearly come to any conclusion because it was too new.

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Geller-cross

THE COURT: Approximately when did they first occupy it?

THE WITNESS: I believe it was in December of 1975 or anuary 1976.

THE COURT: You say this was done a number of months after?

THE WITNESS: Yes.

THE COURT: But you're not sure how many months?

THE WITNESS: To the best of my recollection this was done in November or December of 1976.

THE COURT: And that reflects your approximation or estimate of the actual situation at the time you prepared it?

THE WITNESS: Yes, your Honor.

THE COURT: You are offering it in evidence?

MR. SIMON: I'll offer it.

THE COURT: Any objection?

MS. CALFEE: I'll have to see it.

THE COURT: Show it to counsel.

MS. CALFEE: No objection.

THE CLERK: Defendant's Exhibit B received in evidence.

CROSS-EXAMINATION

BY MR. SIMON (Continuing):

Q As a result of that floor space allocation that you indicated, have record processors been charging the value entities for rental payments since that time?

A They are doing it now. I don't know if it was exactly at that time that I prepear the documents because I had to get the approval, at least from the various officials and trustees as to the proper allocation. Now it is in effect as of the present time as far as rental allocation. I have to prepare bills going back to the inception and charge each of the entities for the time prior to the submission of this document.

Q Would those be carried as receivables to the corporation?

A Yes. Whoever paid the rent from the inception I would be preparing a bill, correcting and changing the rental payments for each of the entities and if in the event it is record processors that paid most of it at that time record processors will have a receivable for the balance due it.

MR. SIMON: I have no further questions.

THE COURT: Any other defendant wishes to question the witness?

MR. FELSENFELD: No, your Honor.

MR. MURPHY: No, your Honor.

THE COURT: Any redirect?

MS. CALFEE: Redirect.

REDIRECT EXAMINATION

BY MS. CALFEE:

Q Mr. Geller, is it your testimony that personnel of RPI participates in the negotiating of collective bargaining agreements then?

A I don't know. I didn't make that statement. I don't know who negotiates for the contracts, that's not within the purview of my duties and I honestly do not know that to be a fact. I do know that employees of Local 806 are record processors are acquainted with certain contribution rates which are required from particular employers to meet the benefits that the employers are currently or will be expected to provide for their employees.

Q Mr. Geller, I believe you testified that you believed approximately 20% of Mrs. Mabroson's time was spent with the annuity fund for the union. Could you break that down a little more, according to your best estimate between the union and the annuity fund?

A It's very difficult for this reason, the annuity fund in particular has a small area, area responsibility and work each month. However, where an employee is terminated or separated from an employer who is covered by the annuity fund he's entitled to receive his stated benefits from the annuity fund, and it has happened in the past that if a greater number of employees come back as has happened at a particular time, Mrs. Mabroson could be involved with work for the annuity fund for a number of hours, days exclusively. There is no uniform time pattern for the annuity fund; so if I give you a percentage it's an overall, but it might vary from month to month. You may have a greater percentage in one particular month because there is a concentration on work occurring, or you might have very little work in another two or three months because it just becomes a matter of routine administration.

Q As I understand it, your earlier testimony with respect to the other entities was an overall percentage. Could you attempt to do that with respect to the union annuity fund?

A Well, I would imagine that her involvement with the union, I stated that there was approximately 20% remaining for the annuity and for the union. If you want me to break down that remaining 20% I would say that it would represent 15% for the union and approximately 5% for the annuity fund, if that will help you.

Q You testified earlier as to the approximate annual contribution to the pension fund and to the welfare fund?

A Yes.

Q Could you tell us what the approximate annual payment of benefits from each fund totals?

A For what period?

Q Let's say for the last fiscal year.

A Yes, with the help of some records I can.

THE COURT: Get the records.

A (continuing) The pension fund in the period ended -- for the year ended June 30, 1976 made payments of approximately $45,000 for the year to retired former employees who are receiving pension benefits. For the welfare fund for the fiscal year ended September 30, 1976, the welfare fund paid out approximately $375,000 in claims paid approximately $90,000 in life insurance benefits.

THE COURT: That's an additional ninety thousand?

THE WITNESS: Yes; paid out approximately twenty-five thousand in dental benefits, thirteen thousand dollars in optical benefits; and I am aware that there was stil due the insurance company for life insurance benefits approximately $50,000.

THE COURT: So you are talking about --

THE WITNESS: The question that was put to me was what was paid out.

Q In claims.

A These are paid claims.

Q In benefits?

A Yes. You have to understand that payments to an insurance carrier are not for benefits, but according to the contract, and the carrier will pay the exact benefit.

THE COURT: That's what I wanted to get cleared. What they are paying to the insurance companies are premiums.

THE WITNESS: But at this particular time it was a combination of both premiums and direct benefits.

THE COURT: You say ninety thousand was pad and how much more was due?

THE WITNESS: Approximately another fifty thousand was due at that time.

MS. CALFEE: No further questions.

THE COURT: Any further questions?

RECROSS EXAMINATION

BY MR. SIMON:

Q When you testified concerning the welfare fund, that was the fiscal year ending September 30, 1976?

A Yes.

Q And you testified about ninety thousand dollars in life insurance claims?

A Premiums.

Q And there is an additional fifty thousand dollars owing?

A Yes.

Q To the carrier?

A Yes, this is normal. This is just a carry-over. I must state that the preparation of the premium reports take place a month or two after the time period, that's stated as September 30, 1976.

MR. SIMON: Okay.

THE WITNESS: What I did not state, we also paid annuity claims, and if it will be helpful I can -- for the year ending April 30, 1976, which was the last fiscal period, there was approximately fifteen thousand dollars paid out in annuity benefits.

THE COURT: Thank you, Mr. Celler, you may step down.

Next witness.

MR. IAPLAN: We would like to call Annie Craig, your Honor.

(continued next page)

ANNIE CRAIG, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KAPLAN:

Q Can you please tell us your occupation?

A Medical Claims Examiner.

Q By whom are you employed?

A Local 806 RPI.

Q Could you please describe for us your duties as a claims processor?

A I process all claims that come into the office. As the Claims Examiner I have to work with the representatives out in the field, with the members.

Q When you say you process all claims that come into the office, does that include pension plans?

A No, only health and welfare claims.

Q Does that include dental claims?

A Yes.

Q Does it include optical claims?

A No.

Q What other claims does it not include?

A That's it.

Q You process welfare and dental plans?

A And the life insurance claims.

Q Would you explain what you mean by processing those claims?

A The claims have to be first verified and if the claim has to be verified after the claim has been verified --

Q You tell us what you mean by verified.

A When the claim comes into the office I have to check to see if the person is covered before the claim can be processed.

Q So by verification you mean determine the eligibility; is that right?

A Yes.

Q Once eligibility is determined, what happens next?

A Then the claim is examined to see if it is proper to be paid.

Q What does that examination entail?

A I look over the claim to see if a signature is present, if the member has completed the claim procedure. Sometimes the claim has been filled out completely by the member and has not been filled out properly by the hospital.

MR. KAPLAN: At this time I would like to have marked for identification as Plaintiff's Exhibit 1.

THE CLERK: Document marked for identification as Plaintiff's Exhibit 1.

Q Can you identify this document?

A Yes, this is the medical claim that is sent in by members.

Q Is that the claim that you were referring to that a member has to send out and you check for accuracy?

THE COURT: Is that --

A Yes.

THE COURT: -- is that a blank form?

THE WITNESS: Yes.

MR. KAPLAN: I would like to move the admission of that blank form into evidence.

THE COURT: Any objection?

MR. FELSENFELD: I object. What possible relevance does that have to this procedure?

MR. KAPLAN: Your Honor, we feel that one anticipated defense might be that certain field representatives assist members in filling out these forms, possibly because of complexity of the form. We feel the Court is entitled to see how complex these forms are and exactly what is involved in filling out the form.

THE COURT: The processing of the form is part of the work that has to be done by RPI; is that correct?

MR. KAPLAN: That is correct.

THE COURT: Overruled. Let it be marked.

THE CLERK: Plaintiff's Exhibit 1 received in evidence.

DIRECT EXAMINATION

BY MR. KAPLAN (Cont.):

Q After you have examined the claim to see that it is properly filled out, what happens next?

A Then I get the worksheet for the prospective class, whether it's basic or basic with major medical.

Q What do you mean by worksheet?

A A worksheet has to be worked up before I can type up the check.

Q Does it list payments for various claims? What is the worksheet?

A The worksheet has all of the information on it that is needed to process a claim.

Q And where does this information come from originally?

A From the policy.

Q This is the insurance policy?

A Yes, it is.

Q And what insurance company prepared that policy?

A Companion Life Insurance Company, to my knowledge.

Q So this is a document prepared by the insurance company which lists the amount of money to be paid, and what is covered and what is not?

A To my knowledge, yes.

Q And that's what you mean when you refer to a worksheet; is that document what you refer to when you are speaking of the worksheet that you use?

A No, the worksheet I use is a document that I prepared my claim on. After the claim has been verified, this is what I process it on.

Q And your processing eventually derives a dollar figure, does it not?

A Yes.

Q And that dollar figure is derived by reference to this document from the insurance company?

A Yes, it does.

Q And in the process of deriving this dollar figure, do you consult with any other individual or do you do that entirely by yourself?

A If need be, then I'll consult somebody else.

Q What would cause such a need?

A There are times when a claim comes in that something is not listed in the policy and I will find out from Mrs. Mavroson if there is a rider to cover this.

Q And Mrs. Mavroson is the person you consult when there is difficulty with the claim?

A Yes.

Q Is there any other person that you consult when there is difficulty with a claim?

A It depends upon the difficulty; sometimes I have to consult the hospital or the doctor.

Q And other than the hospital and the doctor or Mrs. Mavroson, is there anyone else you consult regarding difficulties in claims that come through your desk?

A When I have to consult Mr. Commerford.

Q Will you identify Mr. Commerford?

A He's at the Group Services Administration office where the worksheet is sent for the computer.

Q Other than Mr. Commerford, do you consult with anybody in processing difficult claims?

A No, I do not.

Q This computer corporation that you referred to, what services do they perform, to the best of your knowledge?

A After the worksheet has been worked up, a portion of it goes into the file, the receipt goes to the member and a portion of it goes to the computer, to this Group Services Administration.

Q And what do they do with it at that time?

A It is then put through the computer and we get a run-off copy of this once a month.

Q Does this service performed by Group Services include making any calculation or simply taking your calculation and putting them on computer printouts?

A They take my calculations and put them into the computer.

Q Would it be fair to characterize thatas a record-keeping device as opposed to anything else?

A Yes.

Q Once you have finished working up the claim and derived a dollar amount, what do you then do with the claim?

A The claim is then typed up.

Q And is a check also prepared at that time?

A Yes, it is.

Q And do you do this preparation?

A Yes, I do.

Q And what do you do next?

A After the check has been typed up, if the checks have not been signed, they are then given to Mr. Clark for signature. After I get the signature they are put through the check machine, dismantled and either sent to the doctor, the member, or the hospital.

Q Do I understand you to say that at times Mr. Clarke signs the check before they are filled out and at other times after --

MR. FELSENFELD: I object. I don't see what bearing that has.

THE COURT: Overruled.

A Okay. There are times when I have checks left over with signatures on it and they are locked up; if I do not, then I type it up and I gave it to him and he signs it.

Q When you give it to Mr. Clarke, you give him a check by itself or is there any supporting document with the checks?

A Will you say that again?

Q On those occasions when a check has not been pre-signed by Mr. Clarke and it is filled out by you and must go to him for signature, what does he get from you along with the check?

A I give him the check.

Q And what else, if anything?

A That's it.

Q Does he have anything from you which would allow him to determine how your calculations were derived and how you calculated the figure that's placed on the check?

A No.

Q He has no such documentation?

A No.

Q He has simply a check with an amount payable to an individual and nothing else?

A That's right.

Q After either Mr. Clarke signs the check or you filled out a check that had been pre-signed by Mr. Clarke, what happens next?

A The check is dismantled.

Q What do you mean by dismantled?

A The check is taken apart; the check is then sent to the member, the doctor or the hospital.

Q And you are responsible for seeing that the check is then mailed after Mr. Clarke signs it; is that correct?

A Yes, I am.

Q In the ordinary course of events, excluding those problem cases where you have to consult with either Mrs. Movroson or the computer company, does anyone at any time ever supervise your work or check your calculations?

A No.

MR. KAPLAN: I would like at this time to have this marked as Plaintiff's Exhibit 2.

THE CLERK: One-page document marked for identification as Plaintiff's Exhibit 2.

Q Let me hand you this document and ask you if you can identify that?

A Yes, this is the hospital claim.

Q By hospital claim, what do you mean? Can you talk a little more fully?

A This is the claim that the member takes to the hospital with them when they are going to be admitted.

THE COURT: It's a form?

THE WITNESS: Right.

Q And does the member fill out that form or does the hospital?

A The hospital fills out the form.

MR. KAPLAN: I would like to have that introduced as Plaintiff's Exhibit 2 at this time.

THE COURT: Any objection?

Plaintiff's Exhibit 2 marked in evidence.

MR. KAPLAN: I would like to have this document marked as Plaintiff's Exhibit 3.

THE CLERK: . One-page document marked as Plaintiff's Exhibit 3 for identification.

Q Can you identify that document?

A This is the dental claim form.

Q And is that claim form filled out by the participant?

A Yes, and the dentist.

Q And by the dentist also?

A Yes.

MR. KAPLAN: I would like to have this introduced in evidence.

THE COURT: Any objections?

MR. FELSENFELD: No objections.

MR. SIMON: No objection.

THE COURT: Let it be marked.

THE CLERK: Plaintiff's Exhibit 3 received in evidence.

Q Mrs. Craig, other than the duties that you described to us, do you perform any other duties for RPI?

A Would you please clarify that?

Q You say you process claims and described the whole system when you originally receive the claim until the time when the final check is mailed to the member; other than that system and all of the work you just described in processing those claims, do you form any other functions for RPI?

A Yes, with the representatives.

Q Would you tell us what you mean by representative?

A Representative of a particular shop, the delegate.

THE COURT: What do you do with them?

THE WITNESS: There are times when a delegate is at a particular shop and if they have a problem, if some of the members have problems, the representative will call me to clarify the problem, or if they need medical claim forms they will call me and I will send them medical claim forms or cards for eyeglasses.

Q Can you name the representatives withwhom you work in this capacity?

A Mr. John Gonzalez, Mr. James Isola, Mr. Anthony Calagna, Mr. Bill Nyder.

Q Miss Craig, do you remember on March 22nd being noticed for a deposition by the Plaintiffs in this case?

A I beg your pardon?

Q Do you remember on March 22nd being deposed by the Plaintiff in this case, being in a room with a court reporter when I was asking questions and you were giving answers?

A Yes.

Q At that time, Miss Craig, I asked you the following questions and you gave me the following answers:

MR. SIMON: What page?

MR. KAPLAN: Page 20 of the Craig transcript. I am on line 12. Questions by me; answers by Miss Craig.

MR. SIMON: Is there a copy available for the witness to read from?

THE COURT: She's not entitled to a copy.

Q "Question: Let me mention the name of James Isola. Do you know who that individual is?

"Answer: Yes, I do.

"Question: You do?

"Answer: Yes.

"Question: Do you know if that individual performs any services for Record Processors, Inc.?

"Answer: No, I don't.

"Question: If I mention the name of William Snyder, do you know who that individual is?

"Answer: Yes, I do.

"Question: Do you know if that individual performs any services for RPI?

"Answer: No, I don't.

"Question: If I mention the name Clarence Clarke, do you know who he is?

"Answer: Yes.

"Question: Do you know if he performs any services for RPI?

"Answer: The only thing I know is that he signs the checks.

"Question: Pursuant to his role as Administrator?

"Answer: That's right.

"Question: But you know of no other services he performs for RPI?

"Answer: No.

"Question: Anthony Calagna?

"Answer: Yes.

"Question: Do you know if he performs any services for RPI?

"Answer: No, I don't."

Do you remember being asked those questions and giving those answers?

A Yes; and on that day you asked me that question I told you no I don't because of the fact I did not know what you were meaning about other services.

Now, today you asked me what other work did I do other than the work that I had just said to you and I explained to you what I did.

Q I think the record will reflect --

MR. FELSENFELD: I think it's clear from the transcript that the answer that Miss Craig gave, "No, I don't know," was in response to questions whether they performed services for RPI and that's asking a clerical employee to make the conclusion of whether a particular --

THE COURT: Save your argument for later.

Any cross-examination?

MR. SIMON: May I have Plaintiff's Exhibits 1, 2 and 3, please?

(Exhibits handed to counsel.)

CROSS-EXAMINATION

BY MR. SIMON:

Q Now, Miss Craig, you are employed by the Office of Record Processors and you handle the various claims that come in concerning health and welfare benefits?

A Yes.

Q And, Miss Craig, how long have you been doing that kind of work?

A Six years.

Q And were you employed by another welfare fund or company?

A I was employed by an insurance company.

Q How long were you with that insurance company?

A Three years.

Q And in the course of your being employed by an insurance company, were you working on health and medical claims?

A Yes, I was.

Q And is that work similar to the work you are doing here at 806 Record Processors?

A It's the same work.

Q Are you familiar with medical terms as a result of that work?

A Yes, I am.

Q Now, you have before you Plaintiff's Exhibits 1, 2 and 3 which are the ordinary forms which come before you in the processing of claims; is that correct?

A Yes.

Q And when these claims come in, are they always filled out correctly?

A No, they are not.

Q Now, if you have an incorrectly filled out claim form, do you take any action with respect to that?

A Yes, I make a photostatic copy of the claim form and keep the photostatic copy in the file and return it to the prospective person that did not complete it.

Q Would you mail that to the individual or would you have it delivered to the individual?

A Mail it.

Q And does the claim form come back to you directly?

A Yes, itdoes. It comes through the mail and it is given to me.

Q And do these claim forms also indicate various beneficiaries on them?

A Yes, in any case who the claim is for.

Q Now, in the event the individual who the claim is for is not in your records, what would you do with that?

A It depends upon the dependents involved. If it's a child, I would go to the welfare application card to see if this child is listed. If the child is not listed then I would request a birth certificate to see if this child was born within the time that this member is a covered member. If it is a dependent's wife, if she's not listed, then I request a marriage certificate and after this is done I always request copies; after this is done I then process the claim.

Q Now, in the course of possibly processing that claim, do you receive any calls with regard to the status of those claims?

A Yes, I do.

Q And who would you receive such calls from?

A Sometimes from the insured, the hospital or the doctor.

Q Do you hear from the representative, shop representative?

A Yes, I do.

Q Are these claims at times referred to the shop representative?

A Yes. There are times when I would send out claim forms and the member refuses to send it back or I just do not receive it so I'll go to the representative and I'll give the representative the person's file and they will tell me the claim has been sent out and would they please get in touch with the shop steward.

THE COURT: How often does that happen?

THE WITNESS: Sometimes it's very frequent and sometimes it's very light.

THE COURT: How often has it happened in the last week?

THE WITNESS: In the last week, about three times.

THE COURT: And say in the last month?

THE WITNESS: In the last month, say about seven times.

Q You indicated at times the representatives contact you frequently?

A Yes.

Q Can you give us a number when it's a frequent contact?

A Sometimes a representative is at a particular shop and I'll get like one call after another because maybe sometimes he'll meet with a member who just has a problem and then maybe he'll meet with another member who has a problem who was not there when he called the first time; and sometimes when the representative calls he calls with more than one call, sometimes I have to put three, four, five files out at one time.

Q Do you get complains from the representatives?

A Yes.

(continued next page)

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Q How often do you get complaints and what are the nature of those complaints?

A My complaints are mainly the members do not understand the policy so they feel there is something that is not proper, so the representative will call me to find out exactly how this was paid and why it was paid this way, and I will go to the policy and read what is in the policy to the representative and I'll explain it to him.

Q Are there times when the representatives bring you the claims on a -- that they, that is, they bring them to you physically?

A There are times when a representative is at a particular shop and the member has a claim form, rather than send it in the representative will bring it in to me.

Q Would this be the same for the marriage certificate or birth certificate that you just described?

A Yes.

Q Now, if you do not receive that additional documentation, do you contact the representative?

A Yes.

Q And what would you tell the representative?

A I would tell the representative that I had sent out two form letters asking for this information and I have not received this, and would they please be kind

kind enough to see this member to get this information for me.

Q Does the representative follow up on that?

A Yes, he does.

Q About how often do you have that type of a situation?

A I don't have that too often, but when I do it's always very prompt.

Q Ms. Craig, you mentioned that you prepare the claims and the check that is issued, and you determine that from a specific schedule of benefits?

A Yes.

Q And you calculate the amount of money that is due and you complete the check?

A That's right.

Q Now, do these checks range in varying amounts?

A Yes, they do.

Q I assume some are greater amounts than others?

A Yes.

Q Is there a policy concerning checks which exceeded two thousand dollars?

A Yes, there is. Any check that exceeds two thousand dollars has to be checked over by Mr. Geller.

Q And what does he use in order to check, to review that check?

A Mr. Geller is given the entire claim, the claim with the check, and he will look over the charges presented by the hospital or the doctor, and if they are within reason the claim is okayed.

Q Now, does Mr. Geller also spot check the various claims of lesser amounts as well?

A Less than two thousand dollars? No, he does not.

Q Doesn't spot check them?

A Only if there are claims within that file. Let's say I process a claim and there are surgical,medical, x-ray and laboratory in that same file, then he would check that.

Q The figures that you utilize in order to calculate a check, these are not discretionary figures on your part, are they?

A No.

Q They are fixed figures which you remove from the schedule and you add them together and you issue your check?

A Yes, they are.

Q And the figures are based upon the services rendered which are set forth in the claim form?

A Yes, it is.

MR. SIMON: I have no further questions.

THE COURT: Any other questions?

MR. FELSENFELD: None, your Honor.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. KAPLAN:

Q Ms. Craig, in the last three months, approximately how many marriage certificates have been brought to you by field representatives?

A Do I have to count them?

Q Can you give me an approximate?

A I think I've only needed one or two in the last three months.

Q The last three months how many birth certificates have been brought in to you by field representatives?

A None.

Q Ordinarily if there is something wrong in a claim, something that requires it to be sent back, do you have a routine procedure? What do you routinely do when you find a defect in a claim or something not properly filled out?

A If there is something missing on a claim and I can not call a doctor or the member to get this information --

Q No, I'm saying, you haven't tried that. It's something that the member hasn't filled out.

MR. SIMON: I object to counsel interrupting the witness.

MR. KAPLAN: I'm trying to get her to answer the questions that I'm asking.

THE COURT: Direct your comment to me. Did you finish your answer, Ms. Craig?

THE WITNESS: Yes, sir.

THE COURT: Next question.

MR. KAPLAN: Could the court reporter read back the answer?

(Court Reporter read back the last question and answer.)

THE COURT: What do you routinely do?

THE WITNESS: Make a photostatic copy of the claim, send it back to the doctor and photostat copies are kept in the file.

Q When you send a copy back to the member, do you usually do that by mail?

A Yes, I do.

Q One other question. Are you the only person in RPI who processes welfare claims?

A Yes, I am.

RECROSS EXAMINATION

BY MR. SIMON:

Q When you correct the form and you send it to the member in the mail, do you have occasion when that mail comes back with the wrong address?

A Yes, sir.

Q And then what do you do?

A Then I go to the ledger card to see if a member has called someone else in the office and has given them a change of address and it is on the ledger card. If I do not have that, then I will call the shop for the member's address.

Q Have you had occasion where the shop gives you the same address?

A That's right.

Q Then what do you do?

A Then I'll give it to the representative and ask the representative if they would please deliver this for me.

MR. SIMON: Thank you, Ms. Craig.

MR. KAPLAN: Nothing further.

THE COURT: Next witness.

MR. MURPHY: Before we proceed any further. I don't know whether the Court is going to allow the Government having different attorneys questioning different witnesses or whether one attorney should.

THE COURT: One attorney per witness, I don't care what attorney handles what witness.

CONSTANCE MAVROSON,

called as a witness, having been first duly sworn by a Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION BY

MS. CALFEE:

Q What is your occupation?

A Bookkeeper and office manager.

Q And when you say bookkeeper and office manager, of what entity?

A Of all entities actually.

Q Which local 806 entity?

A Local 806, I.B. of T.; 806 Record Processors, Inc.; Local 806 Teamster's Health and Welfare Fund; Local 806 Teamster's Pension and Retirement Fund; Local 806 Annuity Fund.

Q In your capacity as office manager, do you supervise other employees?

A Yes, I do.

Q And who else is it?

A The office staff.

Q Who are they?

A Marie Shannon, Linda Frank, Mary Schmidt and Annie Craig, I think that's it.

Q Could you describe what functions the office staff performs?

A Go through it all again? I think Mr. Geller has gone through -- you want me to repeat it?

Q Would you please?

A May I say one thing before I start? I think the girls may answer these questions wrong because I have not continually said to them you work for 806, you work for that, so when we go in to work, it's just that, whatever work is there we do.

Q I simply would like to hear -- will you please describe the functions of the people you supervise?

A Function of all work that comes into the office with the receipts and disbursements for all the funds that I mentioned; all benefits derived from the welfare fund, all benefits derived from the pension fund, all benefits derived from the annuity fund.

Q When you talk about receipts, disbursements, does that include receipts of union dues?

A Yes.

Q Could you describe the other clerical functions that are performed by you and people under your supervision?

A I thought I just did. Anything and everything that pertains to clerical work that comes in to an office.

Q Does that include work for the union?

A Yes, it does.

Q Specifically, who types the collective bargaining agreements?

A Our collective bargaining agreements are a fill-in type and I have a typist that does that when I can't do it.

Q Who is that?

A Marie Shannon.

Q Who is it that posts the union dues?

A Linda Frank runs a NCR machine that posts the dues.

Q Respecting the health and welfare fund, who in the office proccesses those claims?

A Ann Craig.

Q Respecting the pension claims, who in the office processes them?

A I do.

Q Do you have any assistance there?

A For pension claims, no. May I just ask a question? I said pension claims. Now, this does not take in receipts or disbursements.

Q I am talking about pension applications, do you process those?

A Yes.

THE COURT: You are paid by the union?

THE WITNESS: Yes.

THE COURT: You receive nothing from any of the funds or RPI?

A No.

DIRECT EXAMINATION

BY MISS CALFEE (continuing):

Q How many claims since February 4, 1977, pension claims?

A We figured it out yesterday, and I don't remember.

Q Do you recall approximately?

A Oh, yes, three.

Q Since February 4, 1977 and the present, right?

A I don't remember now, I think it was three.

Q Approximately three?

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A Yes.

MR. SIMON: This was stipulated to yesterday, Your Honor.

THE WITNESS: And I don't remember.

MS. CALFEE: There seems to be some confusion about stipulations. There are a number of items which we propose to stipulate and if counsel for the defendant is agreeable, we would like to enter them on the record.

MR. MURPHY: We have agreed to a number and that's all, and we told them we would agree to the number today in order to save the time of the Court.

THE COURT: What does it mean?

MR. MURPHY: The number of persons receiving pensions from the number of members covered under the different plans; the number of people in the union.

THE COURT: Is that going to save some time?

MS. CALFEE: You will save some time.

Can I read these into the record now as stipulations?

Number 1, there are currently two thousand one hundred sixty-two dues paying members of Local 806.

2. There are currently 102 employers whose employees are probably 120 shops covered by the collective bargaining agreement.

3. The union has signed one new collective bargaining agreement since January, 1977 and has renewed five contracts since that day.

4. There are currently 2,040 covered employees in the Local 806 health and welfare --

THE COURT: Is there a dispute over that?

MR. MURPHY: She didn't finish. With the 2,040 currently in the plan and the three and a quarter family members participating we then gave an estimate of 10,000 persons eligible to receive benefits from the fund.

THE COURT: Any dispute over that?

MS. CALFEE: And estimated figures.

THE COURT: 2,040 are the ones that are actually covered and that three quarters to four of actually covered people and 10,000 is the potentially coverable people?

MR. FELSENFELD: Just so it's clear, three and a half to four.

THE COURT: Continue.

MS. CALFEE: There are currently 74 persons receiving pensions.

There are currently 1,032 covered employees in the pension fund. Between February 4, 1977 and the present, three pension applications were received by phone.

Between February 4, 1976 and February 4, 1977, 14 pension applications were received and processed by the fund.

For the month of February, 1977, 95 claims for medical benefits were paid by the fund.

THE COURT: What does that mean, that means the checks were issued during that month?

MS. CALFEE: Exactly.

In March, 1977, 247 claims were paid by the fund.

THE COURT: Any others?

MR. MURPHY: It was further noted to that last group figure that they did not include optical, dental or life insurance, nor legal services.

MS. CALFEE: That is correct.

DIRECT EXAMINATION

BY MS. CALFEE (continuing):

Q Do I understand that legal services program is not administered by RPI?

A That is correct.

Q Who administers that program?

A Mr. Herbert Simon.

THE COURT: Is that the extent of the stipulations?

THE WITNESS: Yes.

Q Is it fair to say that 200 health claims is approximately the number of claims processed per month?

A 200?

Q Right.

A Off the top of my head I would say it's a little low, if they want to accept that, fine.

Q Approximately 200 or slightly more?

A More.

MR. MURPHY: Could we have the figure above, slightly more?

THE WITNESS: It would be safe to say it would be between 200 and 300; 200 is low and 300 may be a little high, but it's in there.

DIRECT EXAMINATION

BY MS. CALFEE (continued):

Q Now, I understand that when you said according to stipulations there are 14 pension claims that were processed between February 4, 1976 and February 4, 1977, those then are the claims that you processed?

A Yes.

Q Does Mr. Calagna have any responsibility for the processing of health claims in the office?

A Yes. Does Mr. Calagna?

Q Have any responsibilities?

A I think you're going to throw questions off when you ask me per man, I consider all the men responsible for welfare as one.

Q My specific question was, does Mr. Calagna have any specific responsibility for the processing of health claims?

A Each man is responsible for his own claims that come from his shop.

Q Does he have any responsibility for the processing of the claims, the paper processing that goes on in the office?

A The actual paper work, no.

Q Does Mr. Calagna also have any responsibility for processing of pension claims that goes on in the office?

A Actual mechanics, no.

Q Does Mr. Isola have any responsibility for the processing of health claims in the office?

A Again you're saying mechanics.

Q The process in the office?

A No.

Q Does Mr. Isola have any responsibility for the processing of the pension claims in the office?

A No.

Q Does Mr. Clarke have any responsibility for the processing of health claims in the office?

A No.

Q Does Mr. Clarke have any responsibility for the processing of pension claims in the office?

A No.

Q Does Mr. William Snyder have any responsibility for the processing of health claims in the office?

A No.

Q Does Mr. William Snyder have any responsibility for the processing of pension claims in the office?

A There's only one thing I'm forgetting -- only responsibility as far as I know is signing of a checks which I don't know if that's included in the question.

Q Who has the responsibility of the signing of checks?

A I'm forgetting again, but I think it's when welfare, the claims checks going out is Clarence Clarke, the pension checks I would have to look, I'm not sure, but I think -- I just come prepared with notes, I should have.

Q Does Mr. Gonzales have any responsibility for the processing of health claims in the office?

A No. Now again, I'm assuming that you mean mechanical.

Q Does Mr. Gonzales have any responsibility of processing pension claims in the office?

A No.

Q I understand Mr. Crimmins is no longer employed by RPI; at the time that he was employed, did he have any responsibility for processing of health claims or pension claims?

A No.

Q Mrs. Mavroson, previous testimony has indicated that 806 entity share common office space at 275 Broad Hollow Road. Will you describe where the women whom you supervise and you work?

A The girls are in the center central office, there is a main office there, and the girls sit there.

Q Is there an office assigned to the president of the union, Mr. Calagna?

A Yes. There are no earmarks as such, I know where he sits.

(continued on next page)

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Q Is there an office that you consider Mr. Calagna's office?

A We are getting confused. My mind doesn't work, union, Record Processors, pension, welfare. When I go into work, I work, if I think of Anthony Calagna I don't think of him as president of the union or something else on welfare, and something else on pension. I think of him as Mr. Calagna an employee having to do with all, I can't separate them. This is what's making it very difficult. I think questions will be answered wrong. I have never told them Mr. Calagna is president of one thing and he's this on another and he's this on another. I'm finding it confusing myself and I've been with them for many years.

I don't consider myself as an office employee of one from another.

THE COURT: Does Mr. Calagna have a separate office?

THE WITNESS: Yes.

BY MS. CALFEE:

Q Does Mr. Isola have a separate office?

A Yes.

Q Does the secretary-treasury George Snyder have a separate office?

A Yes.

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Mavroson-direct

Q Are there any adjoining rooms to that office?

A All the offices are adjoining.

Q To Mr. Snyder's office?

MR. SIMON: I'm going to object to that. What is the materiality?

THE COURT: Overruled.

A I don't know what you mean by adjoining room.

Q Are there any rooms that connect to Mr. Snyder's office?

A Yes, the conference room and a little corridor.

Q Are there any other rooms?

A I don't understand.

Q That are adjacent or connected to --

MR. MURPHY: We will concede that there is a bathroom on one side and a corridor, and on the other side there is a shower.

Q Do I understand also that there is a sauna in those rooms?

A Yes.

THE COURT: That's in addition to the shower?

THE WITNESS: It's in one room.

Q Mrs. Mavroson, when we subpoenaed you here today we asked to bring with you a document or book referred to in a deposition which you took listing every shop, the delegate's

Mavroson-direct

name, expiration date and so on. Could you please produce that document now?

Can I have this marked as an exhibit?

THE CLERK: One book marked for identification as Plaintiff's Exhibit 4.

THE COURT: What book is this, Miss Mavroson?

THE WITNESS: It's just something I made up for myself, I call it my Bible.

THE COURT: Tell me generally what kind of information.

THE WITNESS: I have here a list of every shop, the man who services the shop, the expiration of the contract date. I have initiations and dues, I have welfare payments, annuity payments. This saves me a lot of time getting the information.

Q Now, I noticed that there is a column listed business representatives; is that correct?

A Yes.

Q Could you tell me what individuals are included in that column? Is Mr. Calagna included?

A Yes.

THE COURT: What is a business representative?

THE WITNESS: The man that services the shops.

THE COURT: Is that the same as a field

representative?

THE WITNESS: Yes.

THE COURT: Okay.

DIRECT EXAMINATION

BY MS. CALFEE: (continuing)

Q Is Mr. Isola included?

A Yes.

Q Is Mr. Clarke included?

A Yes, he is.

Q Is Mr. William Snyder included?

A Yes.

Q Is Mr. Gonzalez included?

A Yes.

Q Up until his departure, was Mr. Crimmins included?

A Yes, he was.

Q You described this as your Bible, could you tell me what use you put it to?

A Well, I use it many times during the course of the day to refer to the shops for the men and primarily this helps me in teaching the new girls. You have to realize we have a new office staff since moving out to Melville and the girls have no way unless they had to go to contracts to find out what the contributions from an employer of a particular shop would be, and this helps me. I don't know what bearing it would have on anything else.

Q Do I understand that the document shows a given individual as a business representative assigned to each shop?

A Yes.

Q Do I understand that the document indicates what date the collective bargining agreement expires with respect to each shop?

A Yes, it does.

Q Why do you need to know that?

A Well, I have to know it for expiration of contracts.

Q And why do you have to know that?

A So that letters can go out to the company, to the shops when contracts have to be renewed again.

Q Do you send those letters out?

A Yes, I do.

Q From time to time do grievances come into your office?

A Yes.

Q What do you do when grievances come into your office?

A I turn it over to the respective delegate, I turn it over to the man in charge of the shop.

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Mavroson-direct

Q Do I understand that your Bible also indicates the dues paying status of each shop?

A Yes, it does.

Q What use do you put that information to?

A Well, this is really a reference for me, this is what I use it for, when a payment comes in I double check. Many times I double check to make sure that the members are paying the correct dues, the shop is paying the correct welfare, the correct pension and so forth.

Q If the dues are in arrears with respect to a given shop, what do you do?

A We make calls and I ask that the dues be paid. It's just like collections, like any accounts receivables.

Q Do you give that information to the business representative?

A Yes. We also have individual books that the men have to look at each week if their shops are delinquent for either welfare, pension, dues or whatever, they are supposed to work from that. That's another book separate from that. There are separate ones for the pension, separate ones for the union and the annuity; the men work directly with these.

Q You indicated earlier that you or people under your supervision type the collective bargaining agreements?

Mavroson-direct

A That's correct.

Q Who tells you what the terms of the new collective bargaining agreement is?

A The individual negotiating the contract

Q And who would that individual be?

A Depending on the contract. If it was Mr. Calagna's shop, Mr. Calagna; if it was Mr. Isola's shop, it would be Mr. Isola.

Q So each delegate negotiates the collective bargaining agreement respecting his shop?

A That's correct.

MS. CALFEE: I have no further questions at this time.

THE COURT: Cross-examine.

MR. MURPHY: Could we have a fiveminute recess, your Honor?

THE COURT: We'll take a short recess.

(Whereupon a short recess was had.)

(After recess.)

THE COURT: For counsel's guidance I have some criminal matters that I have to work in my schedule somehow today, so as to cause the least disruption on this hearing. We'll go until approximately 1:45 and then resume at 2:45. Over the lunch hour I'll take care of a couple matters then there'll be a short recess around 3:30 for a couple of others.

There has been an offer in evidence of Exhibit 4 in evidence, is there any objection?

MR. FELSENFELD: I am looking through it.

MR. SIMON: I would object.

THE COURT: What grounds?

MR. SIMON: It's not an official record of the union, it's irrelevant and immaterial at this point. Out of that it's a source of reference to the witness and nothing more. Itis in no way binding on any of these organizations.

THE COURT: Miss Calfee, what is its relevance?

MS. CALFEE: It helps us to demonstrate the relationship between the so-called field representatives and what service s they perform in combination with Miss Mavroson's testimony.

THE COURT: What does the document show that she hasn't testified to?

MS. CALFEE: Your Honor, I think it justmore fully elucidates her testimony, the number of shops and the particular business representatives in reference to those shops and the collective bargaining agreement.

THE COURT: Let me see the exhibit.

Miss Mavroson, you told us the names of some of the people who were listed in this document as the business representatives or field representative, I do not recall. Apparently they are not all of them. You were not asked, as I recall, I don't recall hearing the name William Snyder or George Snyder.

THE WITNESS: I think I was asked.

THE COURT: Perhaps you were. But William Snyder is one of the representatives and George Snyder is one and also --

THE WITNESS: This is a very old book, I have to update it now. There are people in there that aren't even with us any more.

THE COURT: You have been updating this and you have been going along with additional things that you put in here and wider paper that's pasted on, but one other name that's on here is Poole?

THE WITNESS: He's no longer with us.

THE COURT: The name you gave us with one or both were one or both of the Snyders, that's all of the representatives, they cover all of the shops that you deal with?

THE WITNESS: That's right.

THE COURT: Other than that fact, Miss Calfee, I don't see that there is any need for this particular exhibit, all the other testimony is in a cumulative form. I don't think for present purposes we need to take away her Bible here.

MS. CALFEE: We would be glad to make copies.

THE COURT: I don't think so, it won't be any more helpful to me than what I already have.

Cross-examine.

CROSS-EXAMINATION

BY MR. SIMON:

Q How long have you been with the 806 -- Local 806?

A Oh, for 11 years.

Q You testified concerning various paper work that is done now for Record Processing; is that right?

A Yes.

Q You stated that the mechanical work was performed by clericals, the girls in the office?

A Yes.

Q Now, is there any work that relates to this paper work, that you mentioned other than the mechanical work?

A Are you referring to just one fund -- again I encompass all funds when I'm thinking.

Q I'll take one at a time.

Mavroson-cross-Simon

Can you describe the mechanical work for the Welfare Fund?

A The Welfare Fund, payments come in, they have to be posted to the individual shops. We also have a list, I think someone had questioned me about delinquencies earlier. There is a separate book that shows payments and the months that are being paid.

If it's permissible I'll refer to the men as the delegates. The men are supposed to look at this book twice a month, middle of the month and towards the latter part of the month to determine who is delinquent and who isn't.

Once again may I clarify when I say the funds, the same process is done for Welfare Fund, Pension Fund and Union Fund, so that takes care of the bringing in of payments.

As far as the men have the responsibility of distributing Welfare booklets, medical forms, ID cards, dental forms.

Q When you say ID cards, what would that be?

A I'm sorry, the little small Welfare card when the member goes to the hospital or a doctor, he has this ID form which proves he's a member and a participating member of 806 Welfare Fund and therefore eligible forbenefits under the fund.

Q Is there a record kept in the office?

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A Yes.

Q Who keeps that? How is that record prepared?

A My clerical staff will take in the receipts. Every member has an individual record card where the posting for each month is put on there, that is on welfare, on pension we have two cards. We have a monthly check-off card and we have legally permanent record cards where the monies are kept for each account.

Q Now, going back a moment, you have collective bargaining agreements which are renewed from time to time; is that correct?

A Yes.

Q And you also have new collective bargaining agreements that is new shops?

A Yes.

Q Now, turning toward a new shop, what will be done with regard to inspecting the health and welfare coverage for the personnel in the new shop and how does that handle?

A The delegates would have to negotiate the type of coverage wanted. Our welfare, I don't know if -- we have two different types of coverage, whether they want a Class A, Class B, whether this particular welfare fund will give them dental coverage, there again we have two dental plans, whether they will be eligible for dental, medical, life insurance,

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optical benefits, pension benefits and so forth.

Q Now, if they work out the terms for the benefits and the coverage, what is the next step that has to be taken in a new shop?

A During organizational or after?

Q After you have a contract.

A After I have a contract, there again, the delegate will have to take out to the shop, if it's a shop with 25 members, 50 members, he will see that each member receives a Welfare booklet, Pension booklet if they also have pension. If they have the ID card he will give them a supply of medical claims, dental claims and whatever other is needed for.

Q Is there a card that each member --

A The ID card.

Q -- that he fills out for the fund?

A I'm sorry, yes, that comes before it. And the delegate should have each member fill out a Welfare application card, this Welfare application card lists the dependents of the beneficiary and this way our records are kept up to date and we know exactly who was covered and for what.

Q So that the field representative or the delegate has the responsibility of seeing to it that those cards are completedand returned to the office?

A Yes.

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Q And when it's returned to the office you file the card?

A Yes, we do.

Q And a girl files those cards, the clerk?

THE COURT: Is that done on a periodic basis?

THE WITNESS: It should be, they have to keep after the members because of a change of address or change of marital status or change of beneficiary. Many times during the course of a year a person moves, they have to notify you of a new address.

THE COURT: Is there a customary period, you do it every six months or every two years, or is it more or less on a needed basis?

THE WITNESS: When the men service their shops they are supposed to tell them each time anyone who has a change of address or change of beneficiary, they should keep the supplies with them.

Q Now, at the function that you just described, are those functions performed by Mr. Calagna?

A Yes.

Q Are they performed by Mr. Isola?

A Yes.

Q Are they performed by Mr. Snyder?

A Yes.

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Q Are they performed by Clarence Clarke to some degree?

A Yes.

Q Where Clarke is concerned, is he a pension fund trustee?

A Mr. Simon, again I can't remember them individually. Mr. -- wait a minute, Mr. Clarke.

Q For the pension and the retirement fund?

A It's suffice to say if you say it is it is.

MR. SIMON: Can we stipulate that Mr. Clarke is a trustee?

THE COURT: Who are the others?

MR. KAPLAN: We would be prepared to stipulate who the trustees are.

THE COURT: Now we have Clarke and again for the retirement fund --

MR. SIMON: George Snyder and Irving Rosensweig and the trustees of the health and welfare fund.

Now, the annuity fund trustees?

A I think I remember it.

THE COURT: The witness says she remembers them.

Q Do you know the annuity trustees, Miss Mavroson?

A I think they referred to it earlier, that's why I think I remember it.

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MR. SIMON: William Snyder is a trustee.

The present annuity trustees are George Snyder, William Snyder, Benjamin Petcove and Irving Rosensweig.

THE COURT: All right, continue.

CROSS-EXAMINATION

BY MR. SIMON: (continuing)

Q Now Mrs. Mavroson, now you prepare or you process the pension claims you said?

A Yes.

Q What is processing a pension claim entail?

A When a member is ready to retire he fills out a pension form by calling the union office or from his respective delegate, this is either sent in or called in by the delegate accompanied by a proof of age -- it has changed a little because of the new law. I would be safer to tell you the old way.

Q Tell us what you do.

A There are two accompanying forms that have to go out after I receive the pension application, the member receives the forms with regard to the new ERISA order, they complete these, send them in. We have to take out the permanent pension record card on the member, there is a formula that is worked up. When this is completed it is sent over to the actuaries for review, they return it to me and then it has to be presented to the trustee for approval.

Q And Clarence Clarke is one of those trustees?

A Yes, with Joseph Grippo, and so they approve the final pension.

Q And Mr. Clarke approves the pension as one of the trustees?

A That's correct.

Q Now, you stated that from time to time there is a delinquency in dues payment received by the union, and there is also delinquency with regard to Welfare and Pension or annuity contributions as well; is that correct?

A Yes.

Q What is the format used -- hold that a second.

With regard to dues delinquency, is that by virtue of the employee not paying his dues?

A Well, no, the dues are collected by the employer and submitted to us by the employer on behalf of the employee.

Q So that the dues are deducted from the employee wages and forwarded on to the union?

A Yes.

Q Now, the welfare and pension monies, are those deducted from the wages, or is that a direct payment from the employer?

A A direct payment from the employer.

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Q It has nothing to do with -- it's not deducted from the employees wages?

A No.

Q Now, has it been your experience with regard to delinquency, if there is a delinquency, the dues, welfare and pension are delinquent at the same time?

A Not necessarily.

Q Whatis your experience in view of the fact that the dues are deducted from the wages of the employees?

A Well, the experience has been that dues are sent in approximately -- more times than not welfare and pension payments are late.

Q Now, when welfare and pension payments are late, what do you do?

A I don't really have to do anything, the men do it.

Q Is there a system concerning welfare?

A Yes.

Q Well, describe that system.

A Again, may I just say we run a very informal office. I have, as I said, this Bible that I work with and we have another book, four of them, as a matter of fact, welfare, pension, annuity and dues, as the money is received it's recorded by month, by employer. The men are supposed to look at these periodically and when there is a delinquency they are supposed to call or go out and collect the monies for that. I don't know who's in charge of it right now but I know Bill Snyder was involved in delinquencies, and he would follow through and in many instances when we had problems then it's turned over to the attorney for collection.

(Continued on next page)

Q Do the men in fact collect these moneys?

A Yes, they do.

Q And when they collect that they go out to the field and collect that?

A Yes, they do.

Q Do they also telephone the individual?

A Yes, we also try to have a policy when one of the men calls the office or anything, like Jimmy or somebody may be calling and saying, will you please send an optical card to so and so and I'll say, are you at so and so, and he'll say yes, and I'll say look and see if he's delinquent, and he'll say yes, he owes for welfare for February, March, while you are there pick up the check, and he'll pick it up.

Q Now, you testified about the negotiation collective bargaining agreements and you also testified that the organization has something of a form agreement that just certain basic information is typed in or filled in?

A I'm sorry, I missed that.

Q That the bargaining agreement is a form that certain information is typed into it?

A Yes, they are filled in.

Q And during the course of negotiation to your knowledge are pension, welfare contributions negotiated?

A Yes, they are.

Q And who would participate in the negotiation of the pension and welfare contributions, would it be the same field representative?

A Yes.

Q Do you know if they stay within one shop or whether they help one another?

A Many times they will help one another.

Q During the course of negotiations and when we are dealing with health and welfare and pension, do you receive calls from these delegates concerning rates being paid by other employers under contract with the union? I'm talking about contribution rates, would you from time to time receive such calls if they are negotiating A, B, C corporation, they want to know what D, E, F corporation is paying?

A Oh, yes, sir; even more important is that I think is the fact that when they are out negotiating on these benefits, many times one of the men will call me and say, you know this shop is asking for a medical plan and a dental plan, and many more benefits that we couldn't possibly give with the premium that they would be paying with the contribution, and they have to sit among themselves and figure out what they can give them with the cost of the package.

MR. SIMON: No further questions.

THE COURT: Any redirect examination?

MS. CALFEE: Yes, your Honor.

REDIRECT EXAMINATION

BY MS. CALFEE:

Q Earlier in your testimony you testified to the organizational period. What does the delegate do during the organizational period?

MR. SIMON: If she knows. I'll object to the form of the question.

THE COURT: Do you know?

THE WITNESS: I would imagine it would be to organize a shop; I don't know.

MS. CALFEE: I have no further questions of this witness, but at this time we subpoenaed certain records. This witness referred to certain records, certain material that were distributed by the delegates in connection with health and pension funds and also exhibit 1 refers to certain materials that are provided to the delegates. We have subpoenaed all those materials and we would ask for their production at this time. All of the materials that have been provided or copies of materials that have been distributed since February 4, 1977. Could we have them produced?

THE COURT: You are asking for copies of whatever may have been distributed since then?

MS. CALFEE: And exhibit 1 relates to certain reports provided to the delegates.

THE COURT: You mean exhibit A?

MS. CALFEE: It must be exhibit A, your Honor, the letter G.

THE COURT: It's the scope of the field representative's function and so forth, job description.

MS. CALFEE: Certain reports that are provided, we subpoenaed reports that have been supplied to them since February 4, 1977, and we would like those produced now.

THE COURT: Gentlemen.

MR. SIMON: I understand what Ms. Calfee is driving at, but the exhibit prepared in 1975 was turned over to -- with a directive or a matter of format. There is no testimony here that the actual format is carried out in just that vein. The format is carried out as the witnesses having describing -- I did not submit it other than to show the background and what it was.

THE COURT: Then I'm not supposed to take that exhibit as anything but what was planned. I'll take what has happened from the witness's testimony, not from the exhibit.

MR. SIMON: I don't think so.

THE COURT: How about the documents then? Mrs. Mavroson referred to paragraph --

MR. SIMON: Are you talking about the plan booklet?

THE COURT: She talked about booklets and ID cards.

MR. FELSENFELD: We have some blanks.

MR. KAPLAN: That's what we are talking about.

THE COURT: While they are looking for those, Ms. Mavroson, I have a couple of questions.

First give her exhibit B.

Mr. Geller testified that somewhere toward the end of last year he had made up this allocation of space amongst the various entities and reviewed it with the authorities of the various entities. Did you assist him in any way in making up this document?

THE WITNESS: Very honestly, I don't remember; Stan and I worked on a lot of things together, it's very possible that I did.

THE COURT: Did you ever see the particular piece of paper before?

THE WITNESS: Yes.

THE COURT: Now, if you look at the top group.

THE WITNESS: Yes, I have, I'm sorry. I do recognize it, only because I always know here this is how the twenty -- yes, I do recognize it.

THE COURT: In the middle group of numbers, starting at the bottom of the list, it refers to a reception area, do you see that, reception area, 450?

THE WITNESS: Yes.

THE COURT: I take it that there is in the suite of offices a reception area?

THE WITNESS: Yes.

THE COURT: There is also a file room?

THE WITNESS: Yes.

THE COURT: A meal room?

THE WITNESS: Yes.

THE COURT: Kitchen?

THE WITNESS: Yes.

THE COURT: Two conference rooms, one about twice as large as the other?

THE WITNESS: You might call it a conference area.

THE COURT: There are two conference rooms?

THE WITNESS: Yes.

THE COURT: And that general office of some 1900 square feet, is that the area where the girls work?

THE WITNESS: We are, yes.

THE COURT: In addition to that are listed six offices, does that account for all the spaces we are talking about now for the rooms I just brought to your attention plus six individual offices?

THE WITNESS: I only count five.

THE COURT: You told me Mr. Calagna has an office, Mr. Isola has an office, Mr. George Snyder has an office.

THE WITNESS: That's the one I left out.

THE COURT: Who are the other three who occupied those offices?

THE WITNESS: There is a large room in the back where the delegates are.

THE COURT: I'm just trying to account for six individual offices or six offices, they may not be individual.

THE WITNESS: Stan, can I ask you a question, I just don't understand this -- is this permissable?

THE COURT: I better keep it reasonably formal. Here are the six offices in addition to the central offices.

THE WITNESS: I only count five for some reason.

THE COURT: Let's say they are five, who occupies them?

THE WITNESS: Are you including the office here?

THE COURT: Who occupied the five that you can't recall?

THE WITNESS: George Snyder, Anthonly Calagna, William Snyder, James Isola.

MR. MURPHY: At one of the deposition the Government prepared a diagram which they put in evidence, and I believe the Government can introduce that.

MS. CALFEE: We'll supply that to Ms. Mavroson too.

THE WITNESS: I still count five.

THE COURT: Are they small offices, about ten by ten?

MR. SIMON: Annie Craig's office is in the center.

THE COURT: On the diagram that was shown to you the corner marked executive office?

THE WITNESS: That's one.

THE COURT: Occupied by whom?

THE WITNESS: George Snyder.

THE COURT: Then we have the sauna and shower and so forth and a large conference room down from that; next to the kitchen. Now going down the other wall to the north it has four rooms listed, room one, room two, room three and a delegates' room. Now room one is occupied by whom? Next to George Snyder.

THE WITNESS: Anthony Calagna.

THE COURT: Room one, Calagna. Room two.

THE WITNESS: William Snyder.

THE COURT: And three?

THE WITNESS: James Isola.

THE COURT: And the room that's marked delegates room, is that desk for the other men as you referred to them?

THE WITNESS: Yes.

THE COURT: Is there any objection if I have this document I have been describing marked as a Court exhibit?

THE CLERK: One page document received in evidence as Court Exhibit 1.

THE COURT: Is it agreed that that is a reasonably accurate diagram of the offices?

MR. MURPHY: This exhibit was prepared by the Government, was submitted for one of the people who worked there during a deposition and the corrections that are noted on here were made as a result of the corrections that were called to the attention of the Government attorney. On this exhibit you'll see a delegates room with two lines and those lines mean that that's an entrance into the delegates room.

THE COURT: From the reception area.

MR. MURPHY: From the large area from the desk where the girls are. You say where Annie Craig was, that's why Ms. Mavroson was confused, over on the right-hand corner where you see the marking in pencil that's an entrance from the main reception area into the room where all the girls sit.

THE COURT: So what was originally marked as file room is really part of the reception room on the right-hand side.

MR. MURPHY: Yes, that's an entrance, passageway.

THE COURT: And where is it that Annie Craig's room is?

MR. MURPHY: Up there on the left-hand side, upper left-hand side there, see her name there and circle?

THE COURT: I see a circle and no name. That's part of the large central area, though?

THE WITNESS: Yes.

THE COURT: Now, I understand.

Now, Mr. Geller talked about allocation of rents ,amongst the various entities in the proportion shown by exhibit B and talked about there's going to be a retroactive adjustment. Do you know whether any actual rental payment in accordance with these percentages have been made to date?

THE WITNESS: Yes, sir.

THE COURT: When did they begin, approximately?

THE WITNESS: One or two months I think

payments have been made, according to these allocations.

THE COURT: All right, just one other question.

With respect to following up on delinquency of dues, welfare and pension payments from the various shops, since February 4 of this year, what has been the delinquency picture? Has there been much need for follow-up activity?

THE WITNESS: February 4th, I'm trying to think. My last delinquency would have been the thirtieth, and while it will be worked up again it should have been worked up the fifteenth. It will be worked up this week and I could give you a better picture then.

THE COURT: It may be too late. What is your best recollection as to the amount of follow-up delinquency work that has been required since February 4th?

THE WITNESS: Well, I think each man would know by having looked at the list. I think they would be better qualified.

THE COURT: You don't keep on top of that yourself?

THE WITNESS: Not right now.

THE COURT: How about over the past year, would you have any basis for estimating how many of these shops are delinquent or frequently are?

THE WITNESS: I would say eight months ago the delinquency list was quite bad, and I think the men have brought it pretty current with the exception of maybe four shops that are still rather delinquent.

THE COURT: Those payments for the fund, are they made on a weekly, monthly basis?

THE WITNESS: Monthly basis.

THE COURT: All right, I have no further questions. Anyone else?

MS. CALFEE: We would like to move the admission of --

MR. FELSENFELD: Let me just point out, included in this package is a pension plan booklet which is now in the process of being revised, just so it's clear.

THE COURT: Mark them all and I'll have the witness at least identify them for the record.

I take it there is no objection to these being marked in evidence? Put stickers on them.

THE CLERK: One ID card marked for

identification as Plaintiff's Exhibit 5.

One card marked for Identification as Plaintiff's Exhibit 6.

Two booklets marked as Plaintiff's 7 and 8.

One card marked for identification at Plaintiff's Exhibit 9.

THE WITNESS: That's two separate cards there.

THE CLERK: Multiple ID card marked for identification as Plaintiff's 10.

One booklet marked for identification as Plaintiff's Exhibit 11.

One booklet marked for identification as Plaintiff's Exhibit 12.

One booklet marked for identification as Plaintiff's Exhibit 13.

Several page document marked for identification as Plaintiff's Exhibit 14.

Several page document marked for identification as Plaintiff's Exhibit 15.

One page document marked for identification as Plaintiff's Exhibit 16.

MR. FELSENFELD: Excuse me, your Honor, can I just check to see if a certain booklet is in there?

THE COURT: Mrs. Mavroson, would you just take those in numerical order by the numbers on the stickers, read us what the exhibit number is and in three or four words tell us what the document is.

THE WITNESS: Exhibit No. 5 is what we call our little welfare ID card, which should accompany the welfare books. These are two separate cards.

THE COURT: It's two cards stapled together.

THE WITNESS: Yes, this is the welfare application card which lists the member, his beneficiaries and his dependants. This is a union application card; exhibit number 7 is the welfare book dental plan.

There should be another one.

THE CLERK: One booklet marked for identification as Plaintiff's exhibit 17.

THE WITNESS: Now, you have exhibit 8, which is the welfare benefit book, this one is in Spanish for Spanish-speaking members.

Exhibit 11 is our pension plan booklet.

Exhibit number 10 are a series of optical cards our members are entitled to glasses.

Exhibit number 12 is again a welfare booklet of the plan, this is plan C; and exhibit number 13 is Plan D, not the same coverage but the same type entity.

Exhibit 14 is the recap sheet that we referred to earlier when the employer makes payment, he sends in a recap sheet accompanying the payment. The green recap is for dues which would accompany his dues payment; the white should accompany his pension payment; the yellow is the welfare, this should accompany the check made out for the welfare fund for payment as to that fund; the blue is the annuity fund.

THE COURT: On each of those recap sheets is the name of the employee and the amount that he's credited with?

THE WITNESS: Yes.

Exhibit number 15 -- well, actually, you have three pages here, one is what we call a statement of claim, which is to accompany any claim sent in to the claims office for payment on a welfare benefit. This is your dental form, and this is our hospital form. Many members request these to submit to a hospital upon admission and they in turn send it to us for process of payment.

Exhibit number 15 is the pension and

retirement application which the member completes and sends in to us on retirement. It should be three months before retirement.

THE COURT: What about 17?

THE WITNESS: 17 is another booklet.

THE COURT: Is there a 16?

THE WITNESS: 16 was the pension and retirement fund. You are missing a couple of forms.

THE COURT: All right, Mrs. Mavroson. Thank you, you may step down.

MR. MURPHY: Will those exhibits be marked in evidence?

THE CLERK: Plaintiff's exhibits 5 through 17 inclusive received in evidence.

MR. KAPLAN: To expedite proceedings I would like to offer some stipulations to counsel. Respective counsel has discussed all of these previous --

MR. MURPHY: Before he goes ahead, I believe I indicated to the Court there has been some discussion regarding certain stipulations, we said we would stipulate. Now they have some conclusory stipulations they want to put in the record, it will throw us out of the courtroom if they do that.

MR. KAPLAN: Counsel hasn't heard one word yet.

MR. SIMON: Can we have a short off the record discussion between counsel, I think I know some of the things he's talking about.

THE COURT: I think it may be a good idea.

MR. KAPLAN: Very well.

(Whereupon an off the record discussion was had.)

(After off the record discussion.)

MR. KAPLAN: We can't reach agreement on all of the figures, only on some of the figures. What I would propose to do is read into the record those figures we can agree to and ask for the production of the books for the other figures, so those can be prepared while we are reading those in. The books we need are the RPI ledger books.

MR. MURPHY: We would be willing during the recess to have them given to the Court as an exhibit and the matters we object to he can make his offer.

THE COURT: Is that agreeable to you, Mr. Kaplan?

MR. KAPLAN: That is agreeable, your Honor. We would like the books now on the other figures which have not been agreed to by counsel, which would be the ledger books for Record Processors Inc.

MR. SIMON: They are present in court. How do you develop your proof?

THE COURT: I assume all the records that have been subpoenaed are present in court.

What is it you intend to do with the book when you get it?

MR. KAPLAN: We would like, your Honor, to offer the entire book into evidence as indication of the salaries received by given individuals between February 4, 1974 and the present date.

THE COURT: Let me see the book.

MR. FELSENFELD: I might point out, I believe Mr. Kaplan when he refers to certain individuals, not referring to any of the four individuals who are in issue here, because as to those four we are able to stipulate as to the amount.

THE COURT: Where is the RPI ledger?

MR. KAPLAN: This contains the most recent entries, your Honor.

THE COURT: What you have given me is the cash receipts, cash disbursements.

MR. KAPLAN: Which represents the salary, we have those payments inserted, we could simply read them off of a list and we believe those payments are correct. We see no reason why they can't be stipulated to.

Counsel has just indicated that he may be willing to stiuplate as to the other figures, your Honor, in which case we would reserve at this point until after the break, until after we can discuss this further.

THE COURT: All right.

MR. KAPLAN: The final matter we would like to stipulate into the record at this time is that the purpose of RPI, which we would read into the record if counsel will agree, if not --

MR. MURPHY: We have a copy of the certification, we would like to offer it.

THE COURT: Fine.

MR. SIMON: It would be a photocopy.

THE COURT: There is an excerpt from it quoted in the Government's brief. Is there any challenge with the accuracy of that?

MR. SIMON: Other than I think your Honor should have a full certificate in front of you.

THE COURT: I have no objection to that,

if you have it.

MR. KAPLAN: We would like to offer this document into evidence.

We are offering the whole thing.

MR. SIMON: The certificate constitutes two pages.

MR. KAPLAN: We'll offer these two as a record of incorporation of RPI.

THE CLERK: Two-page document received in evidence as Plaintiff's Exhibit 18.

MR. KAPLAN: And subject to further discussion on salary figures for the other people that would be in conclusion of these stipulations at this point.

THE COURT: Have you any more witnesses?

MR. KAPLAN: Ms. Calfee.

MS. CALFEE: We would like to offer in evidence pursuant to rule 32A2 of the rules of procedure the deposition of defendant Calagna, Isola and William Snyder.

MR. FELSENFELD: I'll object. These individuals are here to testify today. The depositions of these individuals contain in larger part matters that have no bearing on this hearing today, and to the extent that the testimony which is to be elicited from these witnesses which do bear on the hearing today can be done in person.

THE COURT: Overruled.

THE CLERK: Deposition of Anthony Calagna received in evidence as Plaintiff's Exhibit 19.

Deposition of James Isola received in evidence as Plaintiff's Exhibit 20.

Deposition of William Snyder received in evidence as Plaintiff's Exhibit 21.

MR. SIMON: We didn't have a chance to examine those depositions.

MR. KAPLAN: You have copies.

THE COURT: Show them to counsel.

MR. SIMON: No objection.

MR. FELSENFELD: I still reserve my prior objection.

THE COURT: Still overruled.

MR. SIMON: I'm sorry.

THE COURT: The objection is noted, overruled.

THE CLERK: Plaintiff's Exhibit 19 and 21 inclusive received in evidence.

THE COURT: I have a problem with 18.

Second describint the purposes on the third line of the descriptive portion on this seems to have something stricken out, the word of income received and issue payment. I don't know whether it's intended to be stricken out, and there is added a sentence at the end of that paragraph, I can read part of it, part of it I can't. It says the corporation will not -- I think it says engage in the practice of accounting; is that what it's supposed to say at that part of the original certificate?

MR. SIMON: Yes, sir.

THE COURT: Are those words supposed to be stricken out or not?

MR. FELSENFELD: The words of income received and the word issue payment, and the later word -- and after the word processing is stricken out.

THE COURT: I see; so it should read recording of the necessary entries therein and pursuant to such processing to do any and all things necessary.

MR. FELSENFELD: Exactly.

THE COURT: All right. Then except for those hopefully arrive at stipulations which will be done over the lunch hour, the plaintiff rests.

MS. CALFEE: I would like to introduce into evidence paragraph 10 of my affidavit attached to additional order for show cause going to the discovery and production documents issue.

THE COURT: Any objection to that?

MR. SIMON: May we read paragraph 10?

I object to the addition of that paragraph 10 of evidence of testimony in these proceedings. In my estimation it's a representation of facts which are not fully representative of the issues at the time and the discussions in question.

THE COURT: You want to cross-examine her on the facts she asserts? It isn't that she really wants to introduce the paragraph in evidence, she wants the stipulation that if she took the stand this is what she would testify to.

MR. MURPHY: Without conceding the truth thereof.

THE COURT: You stipulate to that paragraph.

MR. SIMON: I'll stipulate that's paragraph 10.

THE COURT: Are you stipulating that if she takes the stand that's what you'll testify to?

MR. SIMON: Not necessarily, that's what she would testify to.

MR. MURPHY: Maybe she ought to take the stand, sir.

THE COURT: All right. I'll consider the deposition to be heard direct testimony. You have your opportunity to cross-examine.

M A R Y S . C A L F E E ,

called as a witness, having been first duly sworn by a Clerk of the Court, was examined and testified as follows:

CROSS-EXAMINATION

BY MR. SIMON:

Q Ms. Calfee, you are an attorney?

A Yes, I am.

Q You state that certain records were not produced during the course of discovery proceedings; is that correct, on behalf of 806 Record Processing Inc.?

A That's correct. In fact you stated to me that you have produced certain records and have not produced other records.

Q I stated that to you?

A Yes.

Q What else did I say to you?

THE COURT: I assume lots of things, Mr. Simon.

Q I think so. Maybe I can refresh your recollection.

Let's put it this way. What record did I produce for you?

A I would have to go to my files to be specific, but you produced certain records as I understood it you felt were relevant to the issues in the complaint respecting record processors but you said the other records that I requested pursuant to my rule 34 request, you would not produce.

Q What records were those?

A I haven't seen the records so I don't know what they are, but you said they were records relating to internal processes.

Q In the course of your preparation in this case, subsequent to the case, you have been working with representatives of the Department of Labor; is that correct?

A That's correct.

Q And did you work with one Joe Kazane (phonetic

A Yes.

Q Mr. Kazane, did he go through the Record Processors Inc.?

A He had seen certain records of RPI. I have no way of knowing if they are all the records.

Q Well, you don't know whether that's all the records?

A That's right.

Q Do you know what records he went through?

A I know some of the records he went through.

Q Did he report to you concerning those records?

A Yes. He reported to me primarily concerning the financial records.

Q Were there any other records that you were concerned about that you believe existed, that you know Mr. Kazane did not get to see?

A I don't know all the records that exist really in RPI. There were certain records that I requested pursuant to the rule 34 motion.

Q Now, the records concerning -- Mr. Kazane went through -- were those records other than the records I turned over to you for the purpose of copy?

A Certain of them, yes.

Q Now, Mr. Kazane had those records before, did he, or examine those records?

A Which records are you referring to?

Q The ones I turned over to you.

A He may have examined some of them, I'm not sure.

Q You don't know? If I tell you he didn't examine them I would be lying to you, would I?

THE COURT: How does she know?

MR. SIMON: I'm telling her.

So that there are records Mr. Kazane did not examine has been produced; is that correct?

A I can't tell you precisely what Mr. Kazane examined. I can tell you in generalities what you discussed with me. My concern with the request was whether there were additional records besides the one that either Mr. Kazane or I examined.

Q Did you know of additional records?

A Well, there were certain records that I requested if they existed. I don't know whether or not they existed.

Q Did you ask about certain additional records?

A I thought that my rule 34 production motion spoke for itself respecting the scope of records.

Q You stated there was an objection to the fact that certain of these records you were requesting reflected internal matters of 806 Record Processing?

A That was your objection to the production.

Q Do you know if those internal matters are reflected in the books and records that Mr. Kazane examined?

A I know that certain internal matters of 806 RPI are reflected in the books Mr. Kazane examined.

I don't know what the full extent of 806 RPI are, that's why I made the rule 34 request.

Q Does anything by virtue of the records produced or not produced hamper your position in this case?

A When you don't know what the full extent of the records are and certain ones are representative of being produced, it's hard to say whether it happened or not; certain records may have been helpful, I don't know whether they would be or not.

Q Do you know if there are any other records?

A I don't know for sure. I remember one thing I expressly asked for were minute books of RPI and I don't believe I nor anyone has seen those, I don't know if they exist.

Q Miss Calfee, at the examination of production of documents -- again I go back, what documents did I produce at that time?

A I would have to look at my files in some detail in order to determine.

Q Please do.

A Why don't I tell you literally?

Q No. I would like to know specifically. You said I did produce a minute book.

THE COURT: Don't argue with the witness.

Get your records.

THE WITNESS: I don't know if I have those complete records right here as far as the production of documents.

THE COURT: See what you have and answer the question as best you can.

THE WITNESS: To the best of my knowledge what you produced were certain records relating to transaction between 806 RPI and the union and certain --

MR. SIMON: I'm sorry, your Honor, it's not responsive.

THE COURT: Do you have any of your files of that event, records of that event here in court?

THE WITNESS: I don't know if I have them today here in court, your Honor

THE COURT: Then, what is your best recollecti of the records that he did produce?

THE WITNESS: As I best recall he produced certain of the articles of incorporation, certain supporting documents, certain documents relating to a transaction involving the union and welfare fund, and he stated to me he was refusing to produce certain other documents referring to internal processors. There may have been certain minutes in there too reflecting initial meetings of the board of directors, I do not recall. I did not know whether those were the full minute books or not. My point is, I don't know the full extent of the board and report of RPI. He represented to me that you were not going to produce them all.

THE COURT: The one you recall what were produced is what you just described?

THE WITNESS: That's right.

THE COURT: Next question.

Q Did I produce the minutes of the organizationa meetings of RPI?

A I believe you produced certain of the original minutes.

Q Did I produce receipt of the department of state for the incorporation of 806 record processors on March 12, 1975?

A You produced certain materials relating to the incorporation.

Q Did I produce --

A I believe that was included.

Q Did I produce a copy of the bylaws of 806 RPI?

A Yes, you did.

Q Did I produce minutes of the first meeting of the board of directors of 806 RPI?

A I believe you did.

Q Did I produce a copy of the certificate of incorporation?

A I believe I already mentioned that.

Q Did I produce a waiver of a notice of a meeting of the board?

A Yes.

Q Did I produce a copy of the stock certificate of 806 RPI?

A So far as I'm aware, you did, that's right.

Q Did I produce a copy of the first meeting of the shareholders?

A I believe you did.

THE COURT: It would appear you produced the usual corporate kit.

Q And there are certain resolutions within it?

THE COURT: Anything beyond the organizational phase.

Q I also produced a promissory note --
Did I produce a promissory note?

A Those are the supporting documents in relation to the documents.

Q Did I produce copies of notes or obligations of payment existing between local 806 and the Community National Bank and Trust Company of New York?

A Those are certain of the other supporting documents I was referring to respecting the transaction.

(continued on next page)

Q Did I produce a copy of communication from the Community National Bank?

A I believe those were the recording documents.

Q Did I produce a copy of an affidavit of confession of judgment from the pension and retirement fund?

A A set of documents to which I referred.

Q And did I produce for you a resolution, a banking resolution from Calagna and Petcove to the Manufacturer's Hanover Trust Company?

A I characterize that as part of the supporting documents.

Q Did I produce for you a corporate resolution to the Community National Bank as a depository -- as a depositor?

A You produced to me a whole set of records respecting those transactions.

Q And did I also produce an authorization of guarantee from 806 Record Processor's Inc. to the Community National Bank?

A That set of supporting documents.

Q Did I produce a stockholder's consent to such guarantee?

A Yes.

Q And did I also produce a hypothecation agreement from Local 806 RPI?

A Yes, that's right. I might add my concern was not with what you produced, my concern was you declined to produce certain other documents.

THE COURT: Miss Calfee, please be a witness and not a lawyer.

Q Now, did I also produce for you an assignment from the trustees of Local 806 Teamster's Pension & Retirement Fund to Local 806 RPI?

A Yes.

Q And did I also produce for you an affidavit of concession of judgment from the Teamster's Local 806 to 806 RPI?

A You produced a set of supporting documents respecting those transactions, that's right.

And also a bond on behalf of the Local relating to a repayment of a certain obligation and I would have to check my records. I don't have them here. I categorize the subscription but I understand the --

Q Did I produce other affidavits, concession of judgment from the local 806, RPI?

A I don't recall.

Q Did I produce a communication from the local to 806 RPI concerning the undertaking of guarantee of a loan existing between the union and the Community National Bank?

A To be absolutely sure I would have to check my records.

THE COURT: Mr. Simon, you are wasting time.

Q Now, in addition to these documents that were produced for you, did Mr. Kacaine (ph) inform you that he had examined the cancelled checks and bank statement of 806 RPI for the period 12/1/75, 12/31/76?

A I would be glad to agree that matters contained in Mr. Kacaine's affidavit had been --

Q And was the concents of those documents in the cash and receipt journals, was that made available to Mr. Kacaine?

A I would be glad to stipulate to the contents of that affidavit or agree to the contents of that affidavit as to what it was.

Q Have you examined these documents -- you examined these documents?

A Yes.

Q And in examining these documents and the contents thereof, was also available to you what he found therein; is that correct?

A He examined them on behalf of the Department of Labor.

Q It was available to you?

A Yes, sir.

THE COURT: Mr. Kasaine has submitted two affidavits, both of which say he's examined certain records. There is no dispute that what he says in those affidavits are correct, both as to what he examined and what he found.

Q As to what he examined, I won't agree with him -- there may be certain conclusions?

THE COURT: In part what he found is what you're going to work out when we have lunch.

MR. KAPLAN: That is correct.

THE COURT: Insofar as the records, what he examined, what Mr. Kocaine says in his two affidavits is correct, do you agree with that?

THE WITNESS: Yes.

Q And do you know of any other records that you required for this case?

A I am not in a position to know. I am not in possession of those records.

Q Do you know if the records examined by Mr. Kocaine referred to internal matters with respect to the examination?

A Certainly some of the records could be called internal matters of RPI, but I don't know if all of them.

Q When I spoke of internal matters, was I not referring to the fact that nothing in your complaint refers it to any of the internal matters, and I'm speaking about the complaint in this action?

A As I understand -- as I understood it that day, the nature of your objection was the internal matters of RPI were not susecptible to discovery because they were not relevant to my client.

Q And also I question the jurisdiction with regard to that and also, I question the fact that you have everything concerning the allegations of your complaint which were in issue as far as record processing is concerned?

A You also stated you decline to produce certain records.

Q And was there anything further, anything in your complaint relative to 806 RPI, which was not produced and relevant to your allegations in your complaint?

THE COURT: She said at least three time she doesn't know what you didn't produce.

MR. SIMON: I have no further questions.

THE COURT: All right. Plaintiff rests with that subject to these matters to be worked out.

MR. KAPLAN: Yes.

THE COURT: Any testimony from the defense.

MR. KAPLAN: I would say if as has been

stipulated the defendant planned to call the four individuals named we would like to have the figures worked out.

MR. FELSENFELD: I have no problem with the salary payments of those four individuals.

MR. SIMON: I'll call William Snyder.

WILLIAM SNYDER, called as a witness, having been first duly sworn by the Clerk of the Court:

DIRECT EXAMINATION

BY MR. SIMON:

Q Are you one of the defendants named in this application?

A Yes, I am.

Q Are you in the employ of 806 RPI?

A Yes, I am.

Q Will you describe the nature of your employment for 806 RPI?

A My responsibilities for 806 RPI is keeping track of welfare pension inquiries from the membership as I visit shops. I answer their questions about the various welfare plans that that particular shop may be under; inquiries, misunderstandings, interpretation of the book; certain of our members have a recurring change of address, change of name, change of dependants which have to be kept after. Inquiries about payment of claims, lost checks, what the member might consider a misstatement by a doctor or a hospital filling out their claim.

I am also responsible, which I think was mentioned before, delinquency to the pension and welfare fund that extends over 60 days. The rest of the men look at these delinquency lists and during the course, up to 60 days, they handle it pretty much themselves, after 60 days either I compile a list myself or it's one of the girls if she has time, compiles a list of those shops that are more than 60 days delinquent, at which point I divide them up into the areas of which representative services that shop and I inform him of the extended delinquency and request that he expedite the employer to send in the check. If that doesn't happen within a time I inform Mrs. Mavroson, at times I have informed Mrs. Craig to cancel benefits in that particular shop and notify the membership until the delinquency is made current there will not be any benefits paid to the members of that shop, and subsequent to that it's usually entered into an arbitration case. That's part of what I do.

Q Are abritration cases frequent?

A I would say that at times -- I think it's directly connected with the economic times. When the economic times of the area are poor then delinquencies go up and it would be more arbitrations; other times it's not that necessary, one or two notices and an employer will forward the delinquent files.

Q In the forms of your workday, do you have a regular workday?

A No.

Q What is your ordinary workday?

A We are on call 24 hours a day, seven days a week, and if I can possibly expand on that a moment. Going back to the original unsatisfaction of a member, very often we are looked upon by them as someone who would help them in time of need in the beginning. When there are problems that come up whether they be domestic problems or problems relating to health, welfare to the job or personal, very often they will call us if there are disputes on the job, that has nothing to do with the contract, but has to do with the moral and well running of the particular shop and so forth. We had -- we have been called, at least I have, two,three o'clock in the morning to come down to the shop or hold a meeting on a 24-hour shift job which happened on a fairly regular basis, weekends, There are companies that work Saturdays, there are companies that have overtime work on Sundays and very often require our services. The member in his mind, he works nine to five, or he works twelve to eight in the morning and that's his day, and we work for them in essence, and they have a right and they do demand our presence on these jobs at these times, and it's part of our job and we do go.

Q You spoke of the specific demand. Do you in addition to the specific demand, do you make specific visits to various shops?

A Oh, yes.

Q In the course of a specific visit to a various shop, and by the way, that would be a shop under a bargaining agreement of the union?

A Yes, sir.

Q Once you arrive at that shop, which makes any inquiry -- what would you do at that time?

A Well, it's a general visitation to the shop, and I make it my business to go around and see the members, see them individually, just generally, how are things going and almost always there are various problems that come up for the individual member.

Q During the course of a bargaining agreement, most bargaining agreements are three years and problems or inquiries for example, your members are they restricted to items just relative to the job, or are there items concerning the member and his benefits?

THE COURT: You mean it's covered. You are saying what does the collective bargaining agreement cover?

Q Are they just items in the bargaining agreement or are they items -- and I'm talking about -- I withdraw the question, sir.

Comparing the inquiries you received from members during the course of the term of the bargaining agreement, are these inquiries solely on matters such as working conditions?

A No.

Q Are they matters concerning health and welfare?

A I would say --

Q Are they matters concerning pension?

A Yes.

Q And dental benefits?

A Yes, sir.

Q Now, during this period of time can you determine which type of inquiry is discussed more with the member? Is it a type of bargaining agreement, such as hours, job conditions, or does it go to pension and welfare?

A I would say the great majority is questions of interpretation or help filling out forms, and so forth in pension and welfare.

Q And this would ordinarily be on a visit to a shop?

A Yes.

Q And also with regard to that, do you make inquiry concerning the number of people in the bargaining union?

A Yes, sir.

Q And if it's then increased what would your function then be?

A Well, there are a number of ways that I find increases in employment in a particular shop. For instance, the first way would be contact with the shop steward, the union representative on the job and I would ask him or her if there are any new employees and depending upon the answer, if the answer was yes, I would ask how long the employment is because they would have to join the union; if the contract has a union security clause, and I believe all our contracts do, they would have to join the union after thirty days and it would be my responsibility to have them sign an authorization card or make sure that they sign an authorization card filling out the application, the welfare application with their beneficiaries and other pertinent data concerning pension and so forth with them.

Q Do you also have occasion to discuss the fringe benefits with the new employees?

A Yes.

Q Do you have occasion to discuss the welfare benefits?

A Yes and if I can add, that's a recurring process with the membership. You just don't find a new member and lay out the pension and welfare benefits and just forget about it, because very often the entire explanation is not fully comprehended by them and it becomes a recurring, continuing process with them on different points. The question will come, maybe the same questions can come up four or five times within the period of a month by the same individual. It has happened and I'm sure it will continue to happen.

Q Do you also have opportunity to discuss pension benefits?

A Yes.

Q And because of discussing pension benefits, do you have to in essence educate the employee?

A Discussing individual pension benefits our plan is on a total contribution contributed for that employee, it is not a flat rate plan and therefore varies with each employee, so if a question comes up on an individual pension, chances are I could not answer the member at that time, I would have to go back to the office and check the contribution, check the file, get in touch with the actuary to work out the formula based on what this individual pension is or might be some time in the future, and then get back to the member with the answer.

Q Do you from time to time contact the office of clerical employees by phone or personally with regard to pension welfare matters?

A Yes.

Q What would such a contact entail?

A One situation may be a member may say to me I'm waiting three weeks for a claim check and our policy is we like to get them out within ten days or two weeks. I would call the office and just about speak to anybody that picked up the phone and ask them to check this claim and can we get an explanation as to why the claim was held up, that's one particular instance. Another incident, and it happens relatively often, because we are self-insured, we are not underwritten by Blue Cross, Blue Shield. We get refusals of hospitals to honor the ID card, and it creates a lot of problems with members and they come back and complain that the hospital wouldn't honor their card.

Snyder-direct

I would look to contact the administrator of the hospital, or if it's a doctor, contact the doctor and explain the benefits and basically assure him or the hospital that they will get paid. That's another instance that may come up. There are any number of different kinds of situations that could come up on questions of the plan.

Q Do you participate in the negotiation of collective bargaining agreements?

A Yes.

Q In the course of those negotiations, does welfare and pension infringe an issue?

A Yes.

Q In your experience are there difficult areas of negotiation and easy areas of negotiation?

A Yes, for the most part.

Q Now, how do you describe the are of negotiation when it comes to pension and welfare, fringe benefits?

A Fringe in general, I would say, take up the majority of the time and probably more often that not are the beig stumbling blocks in the negotiation process, particularly in the renewals.

Q The employer pretty much resigns themselves to the fact that when the contract is expired they are going to be hit, or they are going to have to come up with some kind of wage increase, they are resigned to that fact but it's very difficult to negotiate increases in pension and welfare contribution; and I've found it's very difficult for an employer to accept the fact that insurance rates go up at probably -- an equal if not much faster rate than most other costs. That's a very difficult thing to get across to them and that's usually in renewals. If we have strikes I would say that a majority of the strikes are because of stumbling blocks in the benefit program.

THE COURT: Mr. Snyder, when you are negotiating matters relating to pension, welfare benefits, you consider yourself to be acting on behalf of RPI or on behalf of the union?

A Well, I think I can best answer it this way, it's very difficult to divide time if we are discussing pension and welfare, but we know our guidelines, where our breaking point is in terms of pension and welfare contributions, according to the actuary reports that we get, and so forth. Now, they have been running very high as of late. I think we are all aware of what's going on with hospital costs and so forth, and very often we feel the employer can not afford the guideline that has been set down by the trustees and all areas and so forth, we will then come back to the trustees of the fund and present them with the problem

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and they will get back to us with a figure which would be amiable to them which we all can live with, at which point we would go back to the employee and alter our position, either alter it or not alter it, depending on the position that is made, alter the position in regard to pension and welfare.

Q How many bargaining agreements do you get involved in during a year?

A During a year, that's a very difficult period. On a three-year period I would rather take it on a three-year period. We don't have a standard expiration date for all our contracts, and our contracts are three years, so that would mean that all of my shops have come up within a three-year period. In my shops I negotiate some forty to forty-five contracts, and from time to time we help each other out, all the fellows having a problem will jump in and help out each other. I would say minimum of forty, forty-five and upward of what we have.

Q That's over a three-year period?

A Yes, over a three-year period.

Q And since the first of the year there has been one new agreement with the union, did you participate in that?

A Not a direct participation, just discussion in the office and suggestion.

Q If there had been five renewals, did you participate in any of those five renewals?

A I would need to check my records on that. I recollect possibly one or more, but I don't think any of them were my shops that expired.

Q So that between February 4th and today, have you had any agreements?

A No. Excuse me, let me say one thing. As was brought out, we had a reduction in staff and I think there were two or three agreements that were in the process of negotiation and I had been asked to take over those next week when the negotiations resume. Up till today answer is no, but starting Monday the anwer is yes.

MR. SIMON: I have no further questions.

THE COURT: Any cross-examination?

MR. KAPLAN: May we have a five-minute recess?

THE COURT: If you're going to do that, let's recess for lunch and we will attempt to resume at 2:30.

(Whereupon a lunch recess was had.)

(After lunch recess.)

THE COURT: Before we go on with the

cross-examination, a couple of questions I would like to get straightened out in my own mind if we can. I had some opportunity over the lunch hour to dig into Title 29. Is there any question that an officer of the union is a party in interest within the meaning of the statute? I direct myself to the defendants.

MR. SIMON: I would say an officer -- assuming that he does not hold -- the officer is not a party in interest, the union as a maker of the trust is a party in interest.

THE COURT: Thus he has got to say any officer of one of the listed group is also a party in interest?

MR. SIMON: Ordinarily we find that the officer is also a trustee, that's when the party in interest thing develops.

THE COURT: Section 1002, Subdivision 14 says the term of party in interest means as to an employee benefits plan; and Section D is an employee organization any of whose members are covered by such plan; and then under H it says an employee, officer or director of a person described in subparagraph B, C, D and so forth. It would seem to me anyone who was an officer, employee or director of the union would therefore be a party in interest. If that's so, with the employment of a union officer directly by the plan being paid the salary by the plan, wouldn't that be a prohibited transaction?

MR. SIMON: No.

THE COURT: Why not?

MR. SIMON: If he receives just one salary under the plan and he receives no other full time salary --

THE COURT: Has the secretary granted anything with respect to this exemption with respect to the grant? Any exemptions under 1108?

MR. SIMON: No one applied for that, that's what you mean, except there is another matter that had been submitted to the Department of Labor before there were any types of procedure established.

THE COURT: Tell me why the employment of a union officer by the plan would not be a prohibited transaction under 1106. It says a judiciary with respect to and shall not cause the plan to engage in a transaction if he knows or should know that such transaction constitutes a direct or indirect -- and C furnishing of goods, services or facilities between the plan and the party in interest, which would be the union officer.

MS. GALLAGHER: It cuts against the position that we would otherwise take, Section 414, which is Section 1144 -- I'm sorry, 1114 of the code provides transition rules, and until 1977,in some cases in 1984, in other cases there is an exemption for the provisions of services and payments for the provision of services provided that some conditions are met. Some of the conditions that are a reasonable amount of money be involved and that the transaction be as advantageous to the plan as a transaction with an unrelated third party armed length transaction.

THE COURT: So if the employment here were directly by the plan rather than by the corporation you say it still might be authorized under 1114?

MS. GALLAGHER: Yes, sir.

THE COURT: My final question is you the defendants contend that the insertion of the corporation between the plan and the employees here make any difference in the overall picture?

MR. SIMON: I've so pleaded, sir. I've pleaded that the corporation does not come within the meaning of this fact.

THE COURT: All right, I thank you.

Now, you can proceed with the cross-examinatio

MR. KAPLAN: Before proceeding with the cross-examination, your Honor, we have agreed on a stipulation.

THE COURT: Good.

MR. KAPLAN: In handing this up I would like to have the Court take note of the fact that on the payment listed for the four individuals who are named in the order, below the listing of payments is a total figure, that total has been added by the labor compliance officer.

The same also is true of the other employees, the addition at the end is the addition compiled by a labor officer.

THE COURT: You are offering this as an exhibit?

MR. KAPLAN: That is correct.

THE CLERK: Three-page document marked as Plaintiff's Exhibit 22 received in evidence.

CROSS-EXAMINATION

BY MR. KAPLAN:

Q Mr. Snyder, as an employee of RPI. to whom do you report?

A I report to Anthony Calagna.

Q Who is Mr. Calagna?

A He's the president of Record Processing, Inc.

Q Does Mr. Calagna give you direction in your work duties?

A From time to time when he thinks there may be a problem.

Q Who is responsible for assigning you to the specific shops, I believe you testified you serviced?

A I don't know. That comes about kind of by attrition. Occasionally we'll just switch around shops pretty much amongst ourselves as long as they are covered. I don't think there is too much of an objection who handles what shop.

Q But Mr. Calagna doesn't make any assignments?

A He has the authority to but it's more of a team effort, I would say.

Q I believe you also testified that negotiations of fringe benefit rates with employers was one of your job duties as an employee of RPI?

A Repeat that.

Q Did you testify on direct that you negotiated with employers relative to fringe benefits?

A Yes, I believe I testified that the majority of the negotiating process relates to fringe benefits.

Q Did you also testify that that negotiation of fringe benefits was in your capacity as an employee of RPI?

A Yes, I believe I did. Excuse me, if I can clarify it.

Q Please do.

A It's very difficult to separate the entire process. We may be talking about wages in one breath for two minutes and go on to pension. We are not getting anywhere there. We'll move over to pension and welfare and jump back to wages. It's very difficult and you can't keep changing hats in mid-stream; you can't say, wait a minute, if you want to address me now as an officer in the local union, but you can't addres me as an officer if we are discussing pension and welfare, it floats, but I would say on the whole the great majority of time was spent with fringe benefit plan and explaining them at the negotiating table.

Q Tell us the purpose what RPI as an organization, what is the organization to do and what does it do?

A I know my responsibility under record processors. I am not an officer, I really don't know.

Q You are saying one of your responsibilities is to enter into such negotiations?

A Yes.

Q Did anyone assign that responsibility to you?

A I believe in a discussion -- general discussions in servicing shops and so forth that have been brought up,and it may have been outlined on a document, I don't know.

Q If you know, does Mr. Calagna as president of RPI know about your activity in negotiating these agreements?

A If there is a problem he is made aware of it each step along the way.

Q Continue.

A If there is no particular problem he is advised of the ultimate settlement.

Q Is he aware though, of the fact that you as an RPI employee do negotiate?

MR. FELSENFELD: I'll have to object. He's asking Mr. Snyder for the state of mind of Mr. Calagna. He could ask him questions concerning discussions he might have had with Mr. Calagna, but I don't see any basis for asking as Mr. Calagna's state of mind, his awareness.

MR. KAPLAN: I was merely asking if he knew whether his employer was aware of his activities.

THE COURT: Interpret the question in that form, Mr. Snyder, and answer it if you can.

A From time to time we have informal discussions, sometimes formal, but most of the time informal discussions when my activities and various problems that may come up within the pension and welfare interpretations and so forth.

Q I don't believe he has been responsive to that question. The question is: If you know, is Mr. Calagna aware of the fact that you spent a part of your time as an RPI employee negitiating fringe benefits?

MR. FELSENFELD: Again I'll renew my objection on the same basis.

THE COURT: Overruled.

A I would say that Mr. Calagna is aware of the fact that the majority of my time is spent on pension and welfare matters.

(continued on next page)

Q Is he aware that any of your time is negotiating agreements, setting pension and welfare rates?

A Yes, I think he is.

Q I believe it has also been stipulated that you are also an officer in Teamsters Local 806, recording secretary?

A That is correct.

Q Is that an elective position by the way?

A Yes.

Q As an elected officer of the local, do you ever attend meetings or have any sort of interchange in turn of your legal --

MR. FELSENFELD: I'll object to that. We are getting beyond what was indicated that the nature of the question as to these four individuals would be, that specifically being the services that they rendered for 806 record processing.

THE COURT: That's a limitation that you have tried to impose, which I say I did not understand when we met before, and I certainly don't understand it today. We are concerned with how this man spends his time, he's paid full time by RPI, as I understand it; and if he's going around the country on union trips then that's something else which I can weigh in determining whether or not there has been a violation here. Overruled.

MR. SIMON: Can we limit that

THE COURT: For the time being as to any specific inquiries, yes, but as to the general inquiry, I'll permit him to.

Q As an elected officer of a Teamsters Local, do you on occasion often time to time meet with and discuss union affairs or Teamsters business with other officers of other Teamsters Locals from time to time?

A From time to time.

Q Do you ever attend meetings with officers or representatives of other Teamsters Locals?

A Yes.

Q Have you recently attended a meeting in Washington, D.C., since February 4, 1977?

A No.

Q Are you aware of any other officers of Local 806 attending such a meeting in Washington, D.C.?

A No, I am not.

Q Have you attended any meetings in your capacity as a Teamster official since February 4, 1977?

A For clarification, you're talking about outside of the realm of 306 itself, with other Teamster officials?

Q Meaning with anyone who is an official, a Teamster official, but not a Teamster official within 806?

A No, I have not met in a formal meeting. I can't recall if I met somebody on the street and said hello but I didn't have a formal meeting since February 4th.

Q Have you taken any trips since February 4, 1977 outside the geographical areas of New Jersey and New York State?

MR. FELSENFELD: I'll object.

THE COURT: I'll overrule it.

MR. FELSENFELD: Can I have some understanding as to why that question is permissible as broad as it is. I can understand if it's limited in some way to the scope of the question, but if he's taken a personal trip for example, that would also come within the question.

MR. KAPLAN: And if that question has been within a week or a month that would come within the order too.

THE COURT: Address your comments to me and not to each other, please.

MR. KAPLAN: Excuse me, your Honor

THE COURT: I am well aware of the possible

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limitations on the concept of traveling, you have to start somewhere. The question is, have you taken any trips. We'll find out what kind if he has; if he hasn't taken any I'll cover the whole area in one question.

MR. FELSENFELD: Just for clarification, is that since February 4th?

THE COURT: I think that's the question that was asked.

Q The question stated, since February 4, 1977.

A I believe I have not taken any trips, and I will clarify my answer this way. Since February 4th I believe, and I think it was the last week in January, I took a vacation for a week with my family.

Q What was that date again?

A I don't recall the date, that's why I clarified it. I will answer specifically, to the best of my knowledge since February 4th I have not taken any trips.

Q Is there an individual employed by RPI whose last name is Devono?

MR. SIMON: If he knows.

A Yes.

Q Mr. Snyder, in any question I ask you, if you do not know, please say you don't know.

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What is Mr. Devono's job title, if you know?

MR. SIMON: I'll object to this line of questioning. Counsel has gone beyond direct and they -- I understand the Government has Mr. Devono under subpoena anyhow.

THE COURT: Overruled.

A I do not know his job title.

Q Do you know what his job activities are -- Strike that.

Is he a field representative and is he responsible for jobs as you are?

A I don't believe so.

Q Do you know what his job functions are?

A I wouldn't be in a position to answer that. I really don't know.

Q Mr. Crimmins (phonetic), do you know who that individual is?

A Yes.

Q Do you know if he's an employee or has been since February 4th of RPI?

A He was an employee. He was a field representative. Up until the exact date, I do not know, I assume that is a matter of record.

Q As a field representative were his functions

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roughly similar to yours but in regard to other shops?

A Yes.

THE COURT: Would that be true with respect to all the field representatives?

THE WITNESS: Yes.

Q How is your salary fixed, who sets your salary?

A Well, the signature on my salary I beli[illegible] Anthony Colagna and Mr. Petcove; who sets my salary, I really do not know. I know what it is but I don't know who sets it.

Q I believe we just stipulated into evidence what it is.

Have you had a raise in the last year?

A I believe there was an increase that was agreed upon which we didn't receive or received for a short period, a week or so, and then there was voluntary reductions that we decided to take.

Q When you say agreed, what do you mean by agreed upon?

A All the fellows got together and agreed to take a reduction.

Q I'm talking about the increase.

A I don't know who sets them. If we could agree, if I had the power to do it, I wouldn't be able to sit here and say I don't know.

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Q Your testimony is you do not know who sets your salary; is that right?

A Right.

Q Are you related to any other individual who is employed by any of the Local 806 entities?

A Yes.

Q Can you name that individual?

A George Snyder.

Q What is that relationship?

A I'm his son.

Q And, if you know, what is the position he holds in the 806 entities?

THE COURT: Secretary Treasurer of the union; Trustee of Health and Welfare; Trustee of the Annuity Fund and employee of RPI.

MR. SIMON: Not an employee of RPI, never employed.

THE COURT: Never employed, somebody gave me some false information over here.

Is that correct? Does he hold any other position?

THE WITNESS: Not to my knowledge.

Q I believe it's also been stipulated that you ar a trustee of the annuity fund; is that correct?

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A Yes.

Q Describe it to us what your duties are as a trustee of that fund?

MR. FELSENFELD: I'll object.

THE COURT: What grounds?

MR. FELSENFELD: It has nothing whatsoever to do with his duties as an employee or the services he performs as an employee of 806 RPI, and there is no connection as there may have been in your Honor's eyes with respect to other questions between his position as an employee of 806 RPI and the union. Here we are getting into still another entity. I don't see any connection between the services he performs for RPI and his position.

THE COURT: Just assume he spends half his time with the annuity fund, you say that's not relevant?

MR. FELSENFELD: That's not been the --

THE COURT: You're objecting to the testimony coming in. I don't know what the testimony will be.

MR. FELSENFELD: But this is in his role as trustee of the annuity fund. I don't seewhat that has to do with the job he performs for 806, RPI.

THE COURT: If he spends half his time working

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for the union or IT&T that's relevant on the question of whether or not he's earning the money he's getting paid by the corporation here, just as it's relevant if he's off on trips someplace because the judgment says he'll be paid for services actually rendered. How do I know what he's rendering. He sleeps so often, he's apparently on call most often, but what he's on call for is what I have to determine.

MR. FELSENFELD: Your Honor, if he had a part-time job someplace else that has no relationship to any of the entities involved, that would be relative, and I don't see why that should be relative if he's a trustee of the annuity fund.

THE COURT: You are correct to the extent that you have inserted that had no relationship to any of the entities involved, if by relationship you mean had no effect upon. Objection overruled.

What is your understanding of your duties as a trustee on the annunity fund?

THE WITNESS: I sit in a fudiciary capacity, it is extremely limited, the time involved; simply because it is by far the smallest of the entities and requires much less attention.

Q What attention does it require?

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A As trustee?

Q In your role as trustee?

A Occasionally attending trustee meetings, signatory to annuity fund checks and that's about the extent of it.

Q How often are these trustee meetings?

A Very rarely; as needed.

Q Once a month, once a year?

A No.

Q Roughly?

A I really don't know how many we had going by last year, but I don't believe it was more than two or three at the most.

Q And in addition to attending these meetings and the signing of checks, you performed no other function in your role as annuity trustee?

A As annuity trustee, no. As a representative for record processors I answered questions directed to me by the membership in regard to the annuity plan, if they are covered by it or can they be covered by it and so forth and so on.

MR. KAPLAN: I have no further questions of this witness. However, your Honor, we have a statement from counsel that Mr. George Snyder is not or

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never has been an employee of 806 Record Processors, Inc.

THE COURT: Mr. Geller said he was.

MR. KAPLAN: And I believe Mrs. Mavroson Bible, that should still be here, listed him as such. I would like to see that again, if I may.

THE COURT: You are through with this witness.

Any redirect?

MR. SIMON: No, sir.

THE COURT: Mr. Snyder, I have one question.

You say you had about 40 or 45 shops that you presently are responsible for?

THE WITNESS: Well, there is some overlap. There are some shops that due to their temperament, if your Honor will try to understand what I'm saying, requires a double coverage so there may be some shared shops in there, I may share with one or more other delegate, field representatives to help with the matters; some larger shops or particular situations that require knowledge that I may have that one of the other fellows may have or vice versa.

THE COURT: Is there any pattern to the visits that you make to these shops? Do you visit them once a week or once a month, or once every three months?

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THE WITNESS: I tried to visit them on a regular basis, excluding emergency situation. As things happen I think every day some kind of emergency arises where I would have to alter my schedule to go to the emergency first and then while I'm in the area if I finish I would go to one or two or three or five depending upon the shops in that area.

THE COURT: In a typical day how many shops would you visit?

THE WITNESS: It would vary, it depends on what develops in each shop. I'll spend two or three days in one shop and other days I'll be able to visit four or five.

THE COURT: Does that depend upon the size of the shop in part?

THE WITNESS: Both the size and the particular problems that may exist.

THE COURT: What is the range in terms of the number of union members in the shops you service?

THE WITNESS: When I think my largest shop is something like 130 people, 140 people.

THE COURT: All right. Any other questions? Thank you, Mr. Snyder.

MR. KAPLAN: Your Honor, Plaintiff's Exhibit

4 which has been introduced, but not accepted into evidence, which is being referred to as Mrs. Mavroson's bible contains under the list of field representatives the name Mr. George Snyder, which name appears repeated times throughout this list.

THE COURT: I saw it when I went through the exhibit.

MR. SIMON: But he's not an employee of Record Processing?

MR. KAPLAN: We have had testimony that all of the field representatives do the same thing and are employed by the same entity.

THE COURT: Mr. Simon, my notes say that Mr. Geller testified that George Snyder has not received pay from RPI since February 4th. I took that to mean that he received it prior to February 4th.

MR. SIMON: No, the only payroll other than the union that he may have been on was he was on the payroll of the Health and Welfare Fund prior to February 4th. He's been on no other payroll.

THE COURT: You better have somebody testify to that.

Who is your next witness?

MR. SIMON: James Isola.

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JAMES ISOLA, called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SIMON:

Q Mr. Isola, are you one of the defendants in this action?

A Yes, I am.

Q And are you an officer of Local 806?

A Yes, I am.

Q What office do you hold?

A Vice President.

Q How long have you been Vice President?

A Little over a year, I believe.

Q And prior to that had you been the recording secretary?

A Yes, I have.

Q Number of years?

A About 20.

Q Now, are you also employed by 806 Record Processor's Inc.?

A I am.

Q And you have been so employed since February 4th of this year?

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Isola-direct-Simon

A I have been.

Q And since February 4th, have you been performing the various duties assigned or required of you by 806 Record Processors, Inc.?

A I have.

Q And did those duties involve matters with respect to the pension fund serviced by 806, RPI?

A They do.

Q And can you describe some of those duties relative to pension?

A Well, it was stated before by Mr. Snyder one of the duties under the RPI is to help the members with their problems with the pension and the many questions that arise upon visiting them in the shops relating to pension and we try to help them distinguish what their benefits are under the plan.

Q Does that take place in the field?

A It takes place in the field and in the office.

Q During the course of such duties, do you take up matters of eligibility?

A Yes, sir.

Q And what does eligibility entail?

A Their eligibility entails their age requirements, the amount of money that will be contributed for them, whether they are eligible under disability to receive a pension, it's many facets.

Q How about enrollment in the plan?

A Yes, sir. We enroll them in the shop upon our visit to the shop, this is one of my duties.

Q Have you had discussions relating to vesting of benefits?

A Yes, this has been a big problem since the change over from the non-vested to vested interest.

Q You have had discussions discussing benefits after retirement?

A Yes.

Q Do you ever hear from retirees, do they contact you?

A Yes, but not -- It's not that often at all. I can remember once or twice.

Q Now, do you handle the cards, the application cards that the workers fill out?

A Yes, I do.

Q Do you have anything to do with rates of contribution or contributions to the pension fund from employers?

A Yes, I do.

Q What do you do with regard to that, after the

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contract has been negotiated, what would your concern be?

A My concern would be with the delinquencies. Basically with the delinquencies to the contribution to the fund.

Q Would you also look in to see whether contributions are being made?

A The proper contribution being asked.

Q And have you had occasions where you had to follow up on delinquency problems?

A Yes.

Q What do you do when you have to follow up on a delinquency problem?

A The employer is notified usually either by the first or second time by telephone; he's notified by mail and then he's notified by a visit to the shop and the case could be turned over to a grievance, but the usual procedure is after these meetings have taken place we usually get the employer to come up with the proper amount of money that's due.

Q And now calling your attention to the Welfare Fund and your duties on behalf of Record Processors, do you perform services which are required by the Welfare Fund?

A Yes, I do.

Q What are some of the duties you perform with regard to Health & Welfare?

A I don't want to be repetitive as far as Mr. Snyder's testimony, but basically it follows the same trend. I might say that in my case I find a good proportion of my duties are funneled more towards the Welfare Fund than any of the other duties I have. Namely a visit to a shop even under a union problem per se may be answered in five minutes. When you get in there then you are deluged with all the problems that exist with the members under eligibility and incorrect payment in their mind to the funds that they feel they "were robbed out of", or they got the wrong amount and we find that most of these problems exist because of the improper -- Their lack of knowledge as to what their benefits are and this is mainly due to the fact that we have numerous turnovers in a number of these shops. We are in the process of re-educating our members, what benefits they have coming to them.

Q Do you also have language problems?

A Definitely, yes. We have members who speak many different languages, but our biggest problem is with our Spanish speaking members.

Q Is there a Spanish speaking representative?

A Yes, there is Mr. Gonzalez who I might say I call upon frequently with his help and these problems.

Isola-direct-Simon

Q Mr. Snyder testified concerning help with filling out forms. Do you aid in filling out forms?

A I might say that's quite a big problem. A lot of our members are illiterate, do not read or write, lots of our members who do not read or write English. They have to be helped with the proper filling out of these cards, which is probably our main problem with the servicing of these claims because of improper information put on these forms or lack of information on these forms by the members after repeated request of trying to get these cards filled out properly.

Q Mr. Snyder indicated something about some difficulties at times with hospitals when a member enters a hospital or their family. Have you had that type of problem?

A Constantly; that's a constant problem.

Q Do you contact the hospital?

A Contact hospital, contact doctors, contact dentists, contact everybody, contact the optometrists.

Q Are you in contact with the office personnel?

A Yes.

Q What would such contact be?

A It could be in two forms. It could be from the shop, from the shop direct calling in when these problems arise, trying to get whatever information we may need to complete the grievance that the member may have as far as hospitalization or pension may go. I call in whatever information is needed in the form of why the claim is delayed, why this amount was paid and not other amounts. A lot of those questions is finally boiling down to the fact that the member had filled out this form incorrectly, causes numerous amounts of problems trying to get these forms filled out properly.

Q Do you have a set working day?

A I start early in the morning and finish late at night.

Q Is it a five-day week?

A Unfortunately no, it's a seven-day week, 24 hour operation.

Q You are always on call?

A I have shops that work around the clock and I'm in contact with them, and I have meetings at two, three, four, five or six in the morning; at night, early in the afternoon or at night.

Q Is it fair to say that almost every time there is a meeting questions relating to fringe benefits are taken up?

A Absolutely.

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MR. SIMON: No further questions.

THE COURT: Cross-examine.

CROSS-EXAMINATION

BY MR. KAPLAN:

Q Mr. Isola, how long have you been drawing a salary from RPI, Inc.?

A Since its inception.

Q Which was?

A I don't recall.

Q Who paid your salary before the formation of RPI, Inc.?

A Local 806.

Q If I understand you, did there come a time after inception of Local 806 when the switch from the Local to RPI took place; is that correct?

A Yes, sir.

Q At the time this switch occurred were there any changes in your job activities?

A Not of any big degree.

Q How many shops are you now primarily responsible for?

A I approximately service about 27, 28 shops at about 35 locations.

(Continued on next page.)

Isola-cross-Kaplan

Q How many of those shops are presently delinquent?

A I pride myself on thinking none of them are. I keep after mine pretty steadily, it's a month to month hassle to get them in on time.

Q When you say you pride yourself that none of them are, to your knowledge at this moment you could not name a single shop of yours that's delinquent?

A Yes.

Q Which one?

A You mean individual shops? I know there's a couple in our building but to any great extent --

Q You cannot name a single shop that's delinquent?

A Doxton and Deale might be one.

Q Maybe or you're sure?

A I said maybe. I believe that the Arcade Cleaners -- How big a delinquency are we speaking of, ten days, five days?

Q At one time does a delinquency become your problem as opposed to an office problem?

A The monies are due -- We allow the employer some leeway. We have been allowing him some leeway until the delinquencies were getting out of hand and we decided

Isola-cross-Kaplan

to crack down on them a little tighter; some times their circumstances being what they are, they extend themselves into a month or two months in some cases.

Q If you know, what percentage of the membership of your Local is Spanish speaking?

A I said it was one of the problems.

Q What percentage of the membership is Spanish speaking?

A Mine or in total?

Q If you know for the entire Local membership?

A I can only give a calculated guess. I would say 35% or 40% may be Spanish speaking.

Q Of the field representatives, if you know, does anyone other than John Gonzalez speak Spanish?

A I don't know.

Q Do you speak Spanish?

A Am I fluent? After 20 years I understand a bit of it.

Q Do you still have to call in Mr. Gonzalez to help you?

A On occasion.

MR. KAPLAN: I have no further questions.

THE COURT: Any other questions?

MR. SIMON: No questions.

Isola-cross-Kaplan
Calagna-direct-Simon

THE COURT: Thank you, Mr. Isola, you may step down.

Next witness.

MR. SIMON: Mr. Calagna.

ANTHONY CALAGNA, witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SIMON:

Q You are one of the defendants in this action?

A Yes, sir.

Q And you are an officer of Local 806?

A Yes.

Q You are the President of Local 806?

A Yes.

Q You are also an employee of RPI?

A Yes.

Q And you are also the President of RPI?

A That's right.

Q And have you been President since its inception?

A Yes, sir.

Q Since February 4th of this year you have continued to be employed by RPI; is that correct?

Yes.

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Q And since that time have you performed your ordinary duties as an employee of RPI?

A Yes.

Q And did those duties include servicing members with respect to welfare and pension benefits?

A Continuous service.

Q And is it fair to say that a description of your duties is similar to those of Mr. Snyder and Mr. Isola?

A Exactly the same.

Q Therefore, you would engage in questions with members concerning eligibility for welfare or pension benefits?

A Correct.

Q And processing of claims and vesting interest?

A Yes.

THE COURT: How many shops do you handle?

THE WITNESS: 30 or 35. I think I've heard of every shop though that I have in the union that I have done something for.

THE COURT: Well, the other two witnesses testified that they had some kind of special responsibility for certain shops.

THE WITNESS: We all have special, your Honor,

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but we all need help with each other. There is no way one man can handle a shop of 50, 60 people, no way.

THE COURT: All right.

Q Is it fair to say a substantial amount of your time and servicing shops, doing work, involves itself with the welfare and pension problems of members?

A Lots of time, yes.

Q Can you estimate the amount of time you spend out there?

A 60, 70%. I would like to explain one thing, if I can. You have to understand nobody has spoken about a contract. When a contract is up, renewed, started, beginning, how we even get into the first step --

THE COURT: You're talking about now the union contract now with the shop?

THE WITNESS: Any shop for contract. First we must set up committees, sensible people to put on these committees, know who they are, make sure they understand English. Getting into the benefits that they ask for, how many things they want, what they want. If they want complete medical coverage, dental, optical, maternity; they want the whole package.

Calagna-direct-Simon

THE COURT: You are now talking about your dealings with the members in anticipation of the negotiations.

THE WITNESS: Right. To explain over and over what we can do and how much money we need for these plans they are talking about, and what they are, these plans and bringing in information and booklets and then one day you come back and you find everybody quit this Committee, they don't want no more part of it, after you went through this already, and it's repeated over and over and it's many many hours and days.

Q Do you also inquire --- do you have to make inquiry to the personnel at the office regarding claims of members.

A Yes, sir.

Q And are you also required to follow up on the delinquency problems?

A Yes, sir.

Q And is this a constant part of your work?

A Yes; many times after the men have finished with the employer, they will still call me because they know I am the President, and they feel I might be able to do something for them, but the men handle it exactly the way it's supposed to be. When they are delinquent the first month we usually call them, we send a letter and then we start going ourselves. By then it's really, usually thentaken care of, then we make arrangements if an employer gets too far back, he'll pay two months for one month.

It all depends. We cannot close him up because we are only hurting ourselves. We are taking everything away from the people then.

THE COURT: Is there any cross-examination?

MR. KAPLAN: I would like to call for production of the Pension Plan documents and the Welfare Plan documents.

MR. SIMON: Talking about the booklet?

I don't know if we have them.

THE COURT: Do you need it to cross-examine this witness?

MR. KAPLAN: We wish to introduce them into evidence, I can continue on.

THE COURT: While they are looking, go ahead.

CROSS- EXAMINATION

BY MR. KAPLAN:

Q Who sets salaries in RPI Inc?

A I would say that I do.

Q The answer is you do?

A Y es.

Q Do you set them by yourself or you deal with the Committee or how do you handle that?

A I get advice.

Q But you make your final decision?

A Yes.

Q In your role as President of Local 806, -- strike that.

Who sets salaries within Local 806?

A Local 806 what?

Q The Labor Union answers the union --

MR. SIMON: I'll object to that, beyond the scope.

THE COURT: How does that bear on our problems today .

MR. KAPLAN: I think your Honor one of the questions which we're talking about is what does work for what entity, and who gets paid what by what entity, if we have the same individual who is President of both entities and he sets the salaries for both entities it puts him in a position to allocate the salary and the work of both entities as he sees fit without allowing one entity to pay its own staff and the other entity to pay its staff.

THE COURT: You set the salaries in the union too?

THE WITNESS: The Executive Board.

MR. SIMON: I would say for the record as indicated, but ordinarily the secretary-treasurer of the organization who works out --

MR. KAPLAN: If Mr.Simon wants to contradict his own witness, I suggest that he take the stand. The witness says the Executive Board sets it.

Give us the names of the members of the Executiv Board of Local 806.

A Anthony Calagna, Bill Snyder, George Snyder, Jim Icola. There is another one.

Q Do you know who?

A Albano and George Harth.

Q Both of them are executive board members?

THE COURT: Those are the officers of the union.

THE WITNESS: No, the last two, the trustees.

MR. FELSENFELD: I would like to point out, Your Honor, these preliminary questions have been asked with respect to the salaries of the local, but nothing in the petition reflects anything concerning any questions regarding the salaries paid by the union. I don't see how it has any bearing on the petition.

THE COURT: Only to the extent of salaries paid to the four gentlemen.

MR. KAPLAN: The petition does go to salaries not paid by the union.

Have you ever heard of a shop called Reilly Brothers?

A Yes, I have heard of them.

Q Has that shop been organized by your local?

A Yes, I assume so. It's one of my contracts that I have seen.

Q Do you know when it was organized?

A No, I don't.

Q Do you know who is responsible for that shop?

THE COURT: You mean the field representative?

Q The field representative responsible for servicing that shop?

A Today?

Q Today.

A Probably the Bill Snyder or Jim Icola.

Q Who was responsible for it one month ago?

A It could have been Ron.

Q Are you sure if it was Mr. Crimmins?

Calagna-cross-Kaplan

A Not a hundred percent sure, no.

Q If y ou know, how many shops was Mr. Crimmins (Phonetic) responsible for before he left?

A Well, Mr. Crimmins wasn't with us that long. I would have to say it was very few.

Q Could you give us a number, estimate?

A No, I wouldn't.

Q Do you know how many shops Mr. Gonzalez is responsible for as a field representative?

A T hat he's responsible for -- I consider him to be responsible for everything that I have too.

Anyw here I have a Spanish speaking person I need Mr. Gonzalez because I don't understand any Spanish or speak Spanish.

Q Would that be true of the other field representatives other than Mr. Gonzalez, he assists them in any way?

A I am sure that he assists them.

Q Does h e have his own shop so he's primarily responsible aside from anyone else?

A He has the biggest and the largest of the whole union.

Q Give us an estimate of the number of those shops?

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Calagna-cross-Kaplan

A I said one shop. One shop is the largest in the whole union which represents I think sometimes from four to six hundred people.

Q Which shop is that?

A Hartz Mountain.

Q Were you ever involved in organizing Hartz Mountain?

A I did organize it.

Q And you turned it over to Mr. Gonzalez at some later date?

A That's correct.

Q Can you give me an estimate, if you can make an estimate, how many total shops Mr. Gonzalez is responsible for?

A I would say about five.

Q Five shops?

A Yes.

Q Is Mr. George Snyder a field representative? Does he perform functions of servicing shops?

A He services.

Q About how many shops would you say George Snyder is responsible for servicing?

A I think George Snyder knows about every shop.

Q Is he primarily responsible for servicing every shop?

A He's not primarily responsible.

Q Is he primarily responsible for servicing any shops?

A I don't think that he's got the responsibility but he knows about every shop.

Q I believe that we heard testimony earlier that the field representatives had decided giving primary responsibility of each shop to a given person; is that correct?

A In a way.

Q Can you explain what you mean by in a way?

A If one of the men are having a real problem in a place I might have to tell another fellow to take that place over at this time because the people in the shop change.

You know everybody wants everything when they want it. We cannot deliver it sometimes so they get angry with the union or with that delegate or with that field representative at that place, and in a couple of months there is a change over of people, but in the meanwhile, that other fellow has gone to me and said, "Look, would you please take this shop over for right now and we would do that, and I would do it with them. We have different personalities. I could work with certain people and somebody else could work better with other people.

Q I understand that. People help out other people when they need it and on occasion people change over.

A What I am getting at with Mr. Snyder now, Mr. Snyder has been with the union over twenty years, he knows exactly what things are. I get a lot of advice from him and he advised me to do this and do that.

If I think it's the right thing to do we do it, we talk about ourselves, the executive board and we come to agreement.

Q Is Mr. Snyder responsible for any shops primarily responsible in the same way that you are primarily responsible for other shops and the other field representatives that are responsible for other shops?

A I think so.

Q Can you name a single shop that you know that he's presently responsible for?

MR. SIMON: Object to that question, it's much beyond the scope of this entire proceeding. We are not going into a party who is not even involved in this part of the matter, George Snyder.

THE COURT: Overruled on that ground, but sustained because what difference does it make whether this witness can name him if there is other ways of

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establishing it.

During a recess which is going to come up very shortly, I am going to suggest to counsel that they take the bible and tabulate the number of shops for each of the field representatives and put on the record after the recess. We'll mark the bible in evidence.

MR. FELSENFELD: One problem I have with that. I don't know how accurate the bible is, no offense.

THE COURT: She testified that it may not be up-to-date, but at least it's some evidence of the balance of allocation of work between some of the interested parties here.

It's better evidence, I think than the recollection testimony of the witnesses that we have had. We have already accounted for more than the hundred shops that are involved and we have only covered three of the witnesses. It has to be some germ of truth found somewhere; and at least that is a record, how good it is, I guess I'll have to determine.

MR. KAPLAN: Very well, your Honor.

THE COURT: Why don't we interrupt at this moment,

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I have another matter. We'll proceed as soon as I can clear those matters up.

(Whereupon, a short recess was had.)

(continued next page)

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JCW

(After recess.)

THE COURT: Before we resume, how many more witnesses does Defendant anticipate?

MR. SIMON: Mr. Geller is here.

THE COURT: Is it possible to get Mr. Geller right now and let him go?

MR. SIMON: Yes.

THE COURT: It's all right with me.

THE CLERK: Mr. Geller, please be advised that you are still under oath.

(The witness Geller now seated in the witness box after having been previously duly sworn by the Clerk of the Court earlier in the day.)

THE COURT: Part of what you're going to ask him may not be necessary. I checked over my notes, the note that I had was a carryover from a previous page which referred to union employees since February 4th. That covers the point that Mr. Snyder has not received any pay from the union since February 4th, and I guess the open question has he at any time, George Snyder, received any salary from RTI.

THE WITNESS: No, George Snyder has never been on the payroll of RTI.

THE COURT: A nything else you want from him?

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MR. SIMON: No.

MR. KAPLAN: No further questions.

THE COURT: Mr. Geller, you are excused. Thank you, very much.

Are there going to be any rebuttal witnesses?

MR. KAPLAN: If the evidence continues the way it's going --

THE COURT: I want to know. We are on cross examination of Mr. Calagna.

MR. KAPLAN: Before we get to that, Your Honor asked us to go through Mrs. Mavroson's Bible, I would now ask Miss Gallagher to read off those names.

MS. GALLAGHER: Your Honor, I made two lists, one list of the names that had not been crossed out on the Bible and another list are the ones that had been crossed out. Of the ones that have not been crossed out, Anthony Calagna, 26 W. Gould, 5; James Isola (phonetic- 25; Clarence Clark 12; William Snyder 38; Mr. Gonzalez, 2, George Snyder, 6; Mr. Crimmins (phonetic), 2, that's all of the ones that had been crossed out. In a couple of cases it was not clear whose names to come up with because there were a couple of names crossed out. I took what happened to be Gould, 3; Snyder, 3;

Clarence Clark, 7; James Isola (phonetic), 7; George Snyder, 3.

MR. FELSENFELD: Your Honor, just so the record is clear, I have advised, I was advised by Ms. Mavroson, as I guess the Court was advised in part during her testimony that this is somewhat outdated, so these are not entirely up-to-date and correct.

MR. KAPLAN: We did call for the production of the trust agreement for the pension plan and the welfare plan.

THE COURT: Have they been found?

MR. KAPLAN: Mr. Simon has informed me through inadvertence they have not been brought here and at this point we would like to let the record be left open when Mr. Simon can produce them.

THE COURT: You could supply copies to me.

MR. SIMON: Within the context of the proceeding they of course -- I don't know about the materiality at this point. You have planned documents here such as the pension plan and the welfare plan.

THE COURT: This is a separate trust instrument?

MR. SIMON: Correct, which in essence -- and this is something that we couldn't get together on

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specific language which the welfare trust instrument provides; that the welfare fund was to provide health and welfare benefits, and the pension trust instruments provides that the pension fund will provide pension benefits. I think for the purpose of this hearing, I think that's all that is necessary at this time without burdening the Court with additional documents.

THE COURT: Is there more significance to the documents than what's been described?

MR. KAPLAN: The documents are primarily to go to the function of the entities involved and what their stated purposes are to be.

THE COURT: There really isn't any issue over that.

MR. KAPLAN: We thought that until we attempted to stipulate this over an extended period of time and after a considerable debate we found the simplest method of doing this is to introduce the documents and let them speak for themselves, and let's not argue about subjects and prepositions.

THE COURT: The plan for each fund is already limited. I'll leave it for Mr. Simon to supply me with copies of the trust instruments.

MR. FELSENFELD: I understand with regard to the pension trust that a new one is currently being worked out in view of the changes in law, and I believe that the one that is enforced prior to making of these changes is already in the hands of the Government.

THE COURT: What does all that mean?

MR. SIMON: I believe what Mr. Felsenfeld is referring to, the pension plan is being revised.

THE COURT: Not the trust instrument?

MR. SIMON: The trust instrument also to some degree.

THE COURT: Can you have it delivered to my chambers sometime tomorrow?

MR. SIMON: I'll try.

MR. KAPLAN: Thank you, Your Honor.

THE COURT: Proceed.

CROSS EXAMINATION

BY MR. KAPLAN: (Continued)

Q Mr. Calagna, who is Mr. Gould?

A He was a field represented that worked for us for a while.

Q And he left before February 4th, 1977; is that correct?

A Yes.

Q Is Mr. Devono employed by RTI?

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A Yes.

Q Is he a field representative responsible for working with shop?

A No.

Q What are his functions?

A He goes on trips to get checks signed, things around the office, general office things. He drives Mr. Snyder well, he's his personal driver.

THE COURT: William or George?

THE WITNESS: George.

Q In your capacity as president of the Teamsters Local 806, the union, do you on occasion attend Teamsters convention or other meetings of Teamsters officials outside of your local?

A Which one do you want to know about?

Q Right now I want to know if you ever do.

A Yes, I attend conventions.

Q Have you attended any meetings or conventions since February 4th, 1977?

A Before February of 1977?

Q Since.

A No.

Q Did you not go to Washington to attend a meeting last month for six weeks?

A No.

Q Have you had occasion since February 4th of this year for any reason to leave the area of New York, New Jersey for a period in excess of two days?

MR. SIMON: For what period? What was that?

Q I asked for a period in excess of two days had he ever had occasion to leave the New York-New Jersey area since February 4th, 1977A

A Yes.

Q When was that and where did you go?

A I don't know what date it was, but I went to Florida.

Q For what period of time?

A One or two days.

Q Was this on business or for personal reasons?

A I would say personal.

Q Is this the only trip that you have taken outside of that area during that time?

A Yes.

Q In regard to Mr. George Snyder, is he a relation of yours in any way?

A Through marriage he's my uncle.

Q He's your uncle through marriage?

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A Yes.

THE COURT: Does that mean he's your wife's

THE WITNESS: No.

My mother is his wife's sister.

Q Mr. Calagna, who are the present directors of RTI Inc.?

A Myself and Mr. Rosensweig.

Q Who presently signs checks on behalf of RTI Inc.?

A I do and Mr. Rosensweig.

Q Was Mr. Petcove ever a director of RPI Inc.?

A No.

Q Mr. Petcove was never a director of RPI Inc.?

A No.

Q Who were the directors at the time that RPI Inc. was founded?

A He's on the staff -- Mr. Petcove is, excuse me.

Q How many directors are there for RPI?

A Myself, Mr. Rosensweig and Mr. Petcove.

Q All three of you are presently directors?

A No; two of us that sign, me and Mr. Rosensweig.

Q But all three of you are directors; is that what you are saying?

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A I'm not too clear what you mean by director. I'm not following you.

Q Does the corporation Record Processes Inc. have a board of directors?

A Sir yes.

Q Who are the members of that board of directors?

A It's on the record there.

Q I'm asking you if you know.

A If I see the record I'll not for sure.

Q Your testimony without the record you're not sure who is on the Board of Directors; is that correct?

A It could have been Mr. Rosensweig and myself.

Q You are sure of that?

A Yes.

Q Are there any other members on the board of directors at the present time?

A Petcove.

Q Anyone else?

A Not that I know of.

Q There are three members of the board of directors you, Mr. Petcove and Mr. Rosensweig; is that correct?

A Yes.

Q Are you familiar with a shop by the name of R.G. Thomas?

A Yes.

Q Has that shop been organized by Local 806, the union?

MR. SIMON: I object. We are going much beyond the scope.

MR. KAPLAN: I believe my next question will tie it in.

THE COURT: All right, I'll take it subject to connection.

Q Has R.G. Thomas been organized by Local 806?

A Yes.

Q When?

MR. SIMON: What connection has that got to do with this proceeding?

THE COURT: Overruled.

A About a month ago.

Who among the field representatives was involved in the organization of R.G. Thomas?

A Mr. Gonzalez.

Q Anyone else?

A I was involved a little bit.

Q Anyone else?

A I think Mr. Clarke.

Q Anyone else?

A I don't know. Mr. Gonzalez might have spoken to the other fellows about it.

Q Do you know how long the organizational activity took, how long it took to organze that shop; I believe you testified on direct this is some of the problems of organizing?

A It was an election there. I assume it must have been a couple of months.

Q Do you have any idea how much time Mr. Gonzalez spent in his organizing activities there before the election?

A I'm sure he was in contact with people every day.

Q In regard to the organizing?

A In regard to the whole situation, organizing, whatever else had to be done.

Q At that point, what else had to be done?

A I'm sure a lot of things.

MR. SIMON: I'll object to this question; Gonzalez is not the subject of this examination.

MR. KAPLAN: He certainly is, Your Honor.

MR. SIMON: He's not one of the parties.

THE COURT: In what way do you say he's a subject?

MR. KAPLAN: He's one of the fulltime employees of Record Processes who we are saying is being paid by RPI for services on behalf of the union.

Q And what portion of the consent order does that violate?

MR. KAPLAN: Permitting RPI -- providing any payment direct or indirect for the benefit of Local 806.

THE COURT: Any direct or indirect payment for any purpose from its assets to Local 806 or for the benefit of Local 806?

MR. KAPLAN: That is correct, Your Honor: and it is our contention that Mr. Gonzalez is being paid.

THE COURT: Overruled.

THE WITNESS: What is the question?

Q What were the things that had to be done by Mr. Gonzalez in connection to R.G. Thomas?

MR. SIMON: If he knows.

THE COURT: Obviously if he knows.

What does it take to organize a shop?

THE WITNESS: I was waiting for him.

THE COURT: Now you've got it from me.

THE WITNESS: Most of the question is what the people are going to receive, what they are looking for, the benefits, conditions.

THE COURT: You said this was organized through an election?

THE WITNESS: Yes.

THE COURT: So any effect you're trying to sell the employees on the advantages to them of their vote to have your union represent them --

THE WITNESS: We were set aside, We go to another step now of proposals. Of course one of the biggest things, is their medical they would like full dental, full optical, major medical and usually it would be a very big handup for the employer and and the union because of the expense of that plan and that's where most of our time is taken up, which plan is going to be given for these individuals.

Q Are the employees of RPI itself covered by its pension and welfare plan?

A Yes -- no, we are not covered.

THE COURT: When you say by its pension plan --

Q By the Local 806 pension and welfare plan, the plan we have been talking about all day?

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A No.

Q Are you personally covered by the Local 806 pension and welfare plan?

A No.

Q You are not a participant in the plan?

A No.

Q Is Mr. Isola a participant in the plan?

A No.

Q Is Mr. Clarke a participant in the plan?

A No.

Q Are any of the clerical and office employees participants in the plan?

A They are in the Local 806 welfare plan.

Q Who is?

A These people you are talking about.

Q That's what I'm asking you.

A I'm misunderstanding the question.

Q Are the employees of RPI participants in the plan?

A Yes, they are. Yes.

Q Does RPI make contributions to the plan on behalf of those employees?

A In our contract -- included in every contract as a contributing employee in our contract negotiations.

in our standard contract.

THE COURT: I don't understand that, Mr. Calagna.

When you say in our contract, you mean in your collective bargaining contract with the shop?

THE WITNESS: Yes, and each contract the employer also considers us.

THE COURT: Us being the RPI employees or the field agents?

THE WITNESS: The field representatives.

THE COURT: How about the clerical staff. Is that anything that the shop management know anything about?

THE WITNESS: I don't know.

Q If you as president of RPI don't know, who would know?

A I answered you, I don't know.

Q Do you know who would know?

A No; maybe Miss Mavroson, she runs the office.

MR. KAPLAN: I have no further questions.

THE COURT: Any redirect?

MR. SIMON: No questions.

THE COURT: Thank you, Mr. Calagna.

(Continued on next page.)

JOHN PAUL GONZALEZ, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SIMON:

Q Mr. Gonzalez, you are a field representative for 806 RPI?

A Yes, I am.

Q Have you been doing that type of work since February 4th of this year?

A Yes, I have.

Q And generally describing your work, you heard the other witnesses who have testified, would that be similar in nature with respect to pension welfare, worked with members in the field?

A Identical.

Q Now, there was some testimony, you were here concerning an organizational drive at R.G. Thomas and Company which the union was recently certified as collective bargaining agent. Were you involved in that organizational campaign?

A Yes, I was.

Q Now, during the course of that organizational campaign, did you also perform or engage in the type of work described with respect to processing and handling matters with relation to welfare and pension benefits in the shop you service?,

A Yes, I was.

Q Did you ever cease doing that work in order to devote your entire attention to R.G. Thomas?

A That's a loaded question.

THE COURT: It's opposed to, from the Government.

THE WITNESS: Let me say if I may elaborate just for a minute or two. When I'm involved in a campaign especially in a shop where the workers are majority of Hispanics, in this particular campaign R.G. Thomas there was a lot of activity with the shop, but it was not of the nature that would distract me from my responsibilities in other areas. However, I did devote a great deal of time with them.

Q By the way, what day was the election?

A March 10th, if I recollect, March 10th. I'm checking my -- March 10th of this year.

THE COURT: Did R.G. Thomas have a high proportion of Spanish speaking people?

THE WITNESS: Approximately seventy five

percent of Hispanics; the other twenty five percent are a mixture of Pakistanis, members of the Black communities and members of the English speaking community.

Q During this period of organization, did you also have to discuss with the R.G. Thomas employees matters concerning welfare and pension benefits?

A Coincidentally this was the main issue, why they came to solicit Local 806 as their collective bargaining agent. If I can clear that up a little bit, R.G. Thomas does in fact, or did in fact have a health and welfare program, Blue Cross/Blue Shield with a major medical, but what is commonly known in the labor movement is a top drawer benefit for the employees. There were those who were able to participate in that program and have coverage and there was those that for whatever the individual reasons were not party to that program. It's a good program so far as I know, but the fact that other employees -- a number of employees are not able to get satisfaction of the benefits, they came to us and asked us about it, so it was really the whole organizing campaign itself revolved around health and welfare pension benefits and the so-called profit sharing program which they supposedly had which the company has not provided us with proof of.

MR. SIMON: I have no further questions.

THE COURT: Cross examination?

MR. KAPLAN: No questions.

THE COURT: I have a question, Mr. Gonzalez.

I have had the impression from what some of the other witneses have said that you seem to be the chief representative to the Hispanic members; is that correct?

THE WITNESS: Well, I imagine in this local, that's about correct.

THE COURT: Is there anyone else in the group that also speaks Spanish, does the same thing that you do?

THE WITNESS: Not as far as Spanish speaking community is concerned. All my colleagues do call on me from time to time not only on organizational procedures but mainly on shop problems where members that cannot speak or read or write English cannot fill out forms properly, and one of the important issues in our local is to have proper forms filled out relating to health and welfare, and they do call me. They do call upon me to come down to the shop with them and not only help the perspective or the member fill out these forms but also to explain

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the program to them, for them and for their families.

THE COURT: Mrs. Mavroson mentioned some of the literature that is passed out is in Spanish as well as in English; is that so?

THE WITNESS: Yes, I do all of the translating for the local, and I do the Spanish literature for the local, and whenever I'm in the office members call in, particularly on health and welfare, I'm the one that assists Miss Craig in answering their questions and getting their programs together.

THE COURT: Do you know approximately what percentage of the membership of the local is Spanish speaking?

THE WITNESS: I could give you a rough estimate.

THE COURT: What would it be?

THE WITNESS: I would say about 40, 45 percent of the membership, the shops that I have. It's the other way around, it's better than 70 percent. Like for example, Harts Mountain is mentioned here where I have approximately 400 members, 85 percent are of Hispanic origin.

THE COURT: Now, we had read into the record a few minutes ago some indication that you are listed in Mrs. Mavroson's Bible as being the field representative for two shops. What is the fact there?

THE WITNESS: I represent three shops with a total membership. I am taking it on the slowest peak of Harts Mountain at this point which is only approximately 400, of a total membership I represent over 700 workers.

THE COURT: It was stipulated that there was a total of 2,000 covered employees in the health and welfare program. All right.

Any other questions? Thank you very much, Mr. Gonzalez.

Any more witnesses from the Defense?

MR. SIMON: Yes, Your Honor.

(Continued on next page.)

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Clark-direct

CLARENCE CLARK,

called as a witness, having first been duly sworn by a Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SIMON:

Q You are one of the defendants in this action?

A Yes, sir.

Q And you are also employed by 806 RPI?

A Yes, sir.

Q And you are also a trustee of the 806 Teamster's Pension Fund?

A That's right.

Q And you have been in this courtroom today and you heard the testimony of various field representatives of Record Processors, Inc.?

A Yes.

Q Do you perform similar duties as the other field representatives?

A Basically the same.

Q And when you are in the field are you also faced with questions of eligibility for pension, welfare?

A Same.

Q And you are also faced with questions regard-

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Clark-direct

ing processing of claims?

A Yes.

Q And are you also faced with questions concerning dilinquency of contributions?

A Same thing, that's right.

Q And you seek to assess collections when an employer is in arrears?

THE COURT: How many shops do you handle?

THE WITNESS: Roughly 15 to 20 I would say, your Honor.

Q And you visit these shops from time to time?

A Yes, I do.

MR. SIMON: I have no further questions.

THE COURT: Cross-examine, Mr. Kaplan.

CROSS-EXAMINATION

BY MR. KAPLAN:

Q Mr. Clark, do you have any other functions for RPI other than the field service that you just described?

A I have authority to sign checks.

Q Who gave you that authority?

A I was appointed as an administrator.

Q You were or are?

A Was.

Q Are you still administrator?

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A I am.

Q Who appointed you administrator?

A I don't remember now, this is the first year, '76.

Q But who appointed you as adminsitrator?

A Appointed by the Board.

Q What Board?

A Examining Board, Mr. Isola, I believe, he appointed.

Q Mr. Isola appointed you administrator of RPI?

A Yes.

Q Other than signing checks, sir, what is your function as representative of RPI?

A I am out in the field.

Q I understand you are the only administrator RPI has?

A The only one.

Q The only person with that title?

A Yes.

Q And you have testified that one of the things you do as administrator that the other field people don't do is sign checks?

A That's right.

Q Is there anything else you do besides signing checks that the other field people do not do?

A No.

Q When you say you sign checks, what kind of checks do you sign, for what purpose?

A What checks?

Q Yes.

A Well, the claim checks, pension welfare checks.

Q You sign the pension checks also?

A There are two signatures required.

Q Whose is the other signature?

A Rosenzweig.

THE COURT: Are those checks the one prepared for you by Miss Craig?

THE WITNESS: Yes, your Honor.

Q Have you had occasion since February 4 to leave the area of New York and New Jersey for a period in excess of two days for any reason?

A I went to Florida for a week. In fact, I got permission from Mr. Felsenfeld, he got permission from you people first.

Q But you were in Florida for a week?

A Yes.

Q Was that for business reasons or personal

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reasons?

A I went to see a friend of mine.

Q During the period from February 4th to the present other than this week's trip to Florida, did you ever have occasion to be outside the New York-New Jersey area for a period in excess of two days?

A No.

Q In your capacity as a pension trustee, how do you know if the pension plan is getting its money's worth from RPI?

A We check the records in the office.

Q You personally check the records in the office?

A I check with her.

Q When was the last time you personally checked with her?

A About a month ago, I would say, when I came back from Florida.

Q What did you check?

A To find out certain -- if something was going on, like shops call up to find out, you know, glasses and hospitalization.

Q I am speaking in your capacity as a pension trustee, does the pension fund have anything to do with hospital and glasses?

A No.

Q Does the pension fund make any payments to RPI?

A No.

Q Who in the pension fund would know if they make any payments to RPI?

A Offhand I wouldn't know.

MR. FELSENFELD: Your Honor, I think we stipulated as to the payments to 806 RPI from the pension.

MR. KAPLAN: We know the figure right now.

THE COURT: I think he's getting to another point.

MR. FELSENFELD: Okay.

MR. KAPLAN: I think that point is made. I have no further questions.

THE COURT: Any redirect?

MR. SIMON: No, sir.

THE COURT: Thank you, Mr. Clark, you may step down.

Any more witnesses?

MR. SIMON: No further witnesses, we rest.

THE OOURT: Any rebuttal testimony?

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MISS CALFEE: No.

THE COURT: The only thing I need then are the trustee instruments which Mr. Simon will supply to me some time tomorrow.

Is there any desire on the part of anyone to argue in way of a summation or to submit a short memoranda soon?

MS. GALLAGHER: Five minutes of argument and we would be glad to submit a memorandum on anything that you think desirable.

THE COURT: You have submitted a rather specific memorandum, your proof is pretty much focused to the points that were outlined in your memorandum. Mr. Simon submitted a general memorandum designed to acquaint me with the overall picture of the operation. Much of that has been reflected probably more between the lines of the testimony than by actual testimony. I don't know whether the defendants wish to focus upon any of the particular points that have been in the Government's memo, I don't know that there have been any special points that have been raised that I would need any further argument from the Government on.

I will hear a brief summation, if anyone wants to give it. Let's hear the summation then maybe you'll decide whether you want to submit something in writing. I'll hear from the Government first.

MS. GALLAGHER: Your Honore, I said five minutes, and perhaps I could even be briefer than that.

It seems to me there is little need to focus on the proof the Government had available because the defendants have overwhelmingly made the case which we propose to make for your Honor. The constructive work that is being done by the persons who testified is being done for the union, and I think that that's clear everything that they said. They testified about their activities in organizing and in negotiating, negotiating wages, negotiating fringe benefits. Their own documents, at least Government's exhibits 12 and 13, which are their brochures, say your local 806 negotiates these benefits for you and of course, that's true, that's union work. From Mr. Gonzales who translates for the union to Mr. Devona who drives for a union officer, it's all union work. There is very little else to be said about it. We don't need to talk about whether it's good or bad. The fact that you waive pension plan over it does not make it for the benefits of those plans. We don't think that the evidence demonstrate that the plans are getting very much for their money from RPI, and because the activity is ongoing and the expense is ongoing and amounts to something in the neighborhood, at least of a hundred and fifty thousand dollars a year, we think it ought to be stopped promptly to the extent that it comes out of plan assets.

Your Honor said that if you were interested in hearing evidence or argument on the appropriate remedy you would let us know. Since you haven't I gather you're not interested in that. I reiterate the Government's view that a receiver for these plans is appropriate at this time.

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THE COURT: Don't sit down quite so fast. Would you say a little more on the subject of remedy. I know you are asking for a receiver. There may be other ways in which the conditions which you claim are established here might be cured, something that might be a little less drastic than a receiver.

MS. GALLAGHER: We thought about that. I think when this consent order was entered we tried to find to find a way to cure the evils with a less drastic remedy. It seems that a historical situation is pretty dimly engrained, and that's a situation in which the union can not be -- or at least clearly has not disassociated from the plan. There is no mechanism readily available to the Government to insure that that will happen other than the point of an independent decision maker who can assess the needs of those plans and insure that they don't pay for more than what they are getting.

THE COURT: What is your view of it? What is your view of the proper relationship between a union and its pension and welfare trust?

MS. GALLAGHER: That's such a difficult question, your Honor, the relationship is multi-faceted, the union on behalf of its members bargains with employers for benefits, and those benefits are

2 frequently administered in a Taft-Hartley arrangement. How those employees, employers interact is a terribly complex situation currently pending in many courts and before the labor board. What we have to say about that is that that plan trustees are first and foremost trustees, they have a fiduciary duty to the participant in the plan and anything that the union would want of them that is inconsistent with that they can't give, regardless.

We have also acknowledged their duty to be responsive to the desires of the plan sponsored, the employer in the union to the extent that that is consistent with their fiduciary duty, but the union doesn't own the plan, that is just a basic problem. The union can't run it, can't manage it, can't manipulate it; and that's not the appropriate relationship.

THE COURT: To what extent are the duties of the trustees governed by state law in this case?

MS. GALLAGHER: Not at all. I refer you to Section 514 of ERISA, which says that a state law is entirely preempted to the -- it's the broadest preemption language you can imagine.

THE COURT: My impression of state law with respect to employees is that it would be considerably more demanding than what has been described to me here.

MS. GALLAGHER, Your Honor, I think the ERISA fiduciary standards which is Section 404 -- and again I would have to give you the code number, sets a very high level of fiduciary responsibility on employers. It requires that they act in behalf of the participants and beneficiaries, that they pay out plan assets exclusively for benefits, and reasonable administrative expenses; reasonable administrative expenses; that they act in all things with the care, skill, prudence and diligence that a similarly situated person in an operation with similar objectives would use, and that they diversify the plan, and that they comply with the terms of the plan instrument.

THE COURT: But what about this deferral before the district standards all come into effect?

MS. GALLAGHER: That's in effect now. That came into effect on January 1, 1975.

THE COURT: All right. Let me hear from the defendants if they wish to be heard.

MR. SIMON: I've submitted a memorandum to your Honor in which I attempted to show you and hope to aid you in regard to insight concerning the operation of unions, employee benefit funds and an overall picture, and just now I heard that no union owns a benefit plan; and a union has to operate separately from that plan, but the union may not own the plan but the worker beneficiaries I think they own them both, they own the union, they own the plan, and what it came down to is this use service as a union representative. You also have to service this plan.

Now, it would be wonderful if you could take the board of trustees -- and we are talking about Taft-Hartley trustees, employee and employer -- like Mr. Rosenzweig who sat here all day and wasn't even called all day, and a union official who also has some concern about his union operation, make them trustees and then go ahead and carry out all of these functions that counsel has suggested they do in that fiduciary relationship and in their fiduciary obligation. As a practical matter, and as the Government has already conceded, maybe not in this court but by regulation by fiat, by statements, that it just doesn't work that way. We are all in a real world and when individuals act in that real world there is nothing wrong with paying those individuals, and when they work for and do work for a

5 benefit fund in essence, or for the pension fund, let them be paid for doing that work -- and by the way, the Government does not object to those payments, there is nothing wrong with those payments. The only thing that the Government is saying here, golly, damn, in taking care of this fund, in doing for what those beneficiaries need, what they need and what is necessary for them you are helping the union, they are going to think your union is a great organization and this is what this entire case comes down to.

I have represented labor organizations for twenty-seven years and I know this problem, it stands out; so that these men for the period involved, and I'm talking about between negotiations of contracts. We are not talking about every day of the week organization. We are talking about the day-to-day operation of these organizations. When they operate they are flooded, the men are flooded, the people in the field -- and talking about the four who are here before you, and I think there is some technicality with respect to Mr. Clarke, but with the others they are field representatives doing work for those funds, making those funds effective, carrying out that fiduciary duty. They may not be fiduciaries, but they are seeing to it that the fiduciary is being carried out because a fiduciary duty is not to see that the money comes in, get the money, invest the money and buy a plan; the fiduciary duty goes beyond that, and as for the indication, or the attempt to say, let's be reasonable, don't spend too much money, I say to you, sir, there is no definite -- there is no definition of what is reasonable. What a man under the circumstances must do, I say, sir, the standard must be what does a man who is a trustee of a welfare or pension fund covered by a union, through a union contract, that's a separate standard, and once and for all this government ought to learn there are separate standards. WE are not dealing with a Chase Manhattan Trust for two or three beneficiaries, we are dealing with an operating trust that provides benefits every day of the week to members and their families, and there is a duty to represent that trust and to carry out a function for that trust; and those men who you heard testify today, they are carrying out that function, they carry it out through record processors so we could avoid four different payrolls, we could avoid other expenses, but they have a right to do that work and they have a right to receive a living wage for

7 that work. I submit to, your Honor, there was no contempt here, never any essence of a contempt. We had an order, we agreed to it so we could establish a status quo. There are some wages, it seems to be some of the payments in there. You have the exhibits, and I say to you, sir, if those items had been brought to our attention we would have cleared them up. We came into this lawsuit without knowing there was a lawsuit. We came into this court today without knowing that prior to service of the petition there was any violation of the order, and I say to you, sir, we are complying with that order. We are keeping these funds going, we are keeping the benefits flowing to these beneficiaries, and this is what is necessary now. When we have the full trial of this matter then the entire matter can be disposed of but I say to you, sir, there has been no change in operation in any way that differs from prior to February 4th with regard to what the Government is complaining about. Of course, you have those other payments and the other two issues, yes; then that, of course, that is not being repeated, the loan issue, the leasehold. There is no repetition of that. Then of course you have the payments to Snyder and that's the only one they talk about, but we stopped the payments to Clarke. We

already stopped the payments well in excess of a hundred thousand dollars a year with regard to these funds, and I think at the present time we are moving along. We only want to do one thing, maintain a fluid and proper functioning operation for and on behalf of the beneficiaries. We don't need receivers. It is not necessary, and I have nothing further. If your Honor desires a brief, I would be pleased to submit one.

(continued on next page)

THE COURT: One point that I'm not very clear on as to the nature of your argument is how the presence of RPI changes the situation from what it would be if people who were paid salaries by RPI were appointed directly by the trustees.

MR. SIMON: To this extent, sir. If they were employed directly by trutees, there is no question in my mind that a greater majority of the work with regard -- talking about the field -- goes to welfare. It is not unusual, and let us say if you have just one grouping employed by welfare and somebody employed by pension, is the fellow on welfare going to ask questions on pension or will he call somebody from pension, or the other way; shall we have them on two payrolls, and he may find some days it's all pension, other days all welfare. Of course, you have a two to one ratio as far as welfare and pension goes -- number of people covered -- but we are also concerned with an actuarial requirement. As you notice there is a great difference in the contribution or the payment by pension to RPI as compared to the payment by welfare to RPI. Pension needs its money for future benefits; welfare requires its money from day to day operation. Welfare isn't concerned with being funded for ten years hence,

(Continued on next page)

2 10 five years hence, three years hence, two years hence, it just needs to be funded for today, nothing else. Pension is concerned with thirty years down the line. Our pension fund, it so happens, is fully funded at this point, it's fully funded, but that's why the RPI, utilization of RPI is a single entity to get everything done.

THE COURT: I take it the annuity fund has not been asked to contribute because it's such a small proportion?

MR. SIMON: It's small and it's good-will, it's a corporation and it's giving out good-will.

THE COURT: There was not much testimony about the annuity fund, that's on a contributory basis?

MR. SIMON: When you say contributory -- no, it's contributed to also by the employer.

THE COURT: Direct payment from the employer?

MR. SIMON: Yes.

THE COURT: All right, anyone else wish to be heard?

MR. FEISENFELD : No.

MR. MURPHY: I would just like to call your attention to one factual situation here, the consent order refers to four men, and it says that to do

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you saying that these are legitimate functions of RPI?

MR. MURPHY: I say there is not that much work involved, you shouldn't pay any attention to it. You take these affidavits from Miss Calfee and take it with tongue in cheek.

MR. FELSENFELD: Your Honor, I would just like to point out that first apart from the negotiation of contracts there has been a multitude of evidence, testimony demonstrating it.

With regard to the negotiating of contracts and the negotiating of welfare and pension benefits under these contracts there has also been testimony as to the necessity for these field people, to the extent that they do participate in the negotiation of contracts to keep in mind, the type of plan that the funds can carry, and while trying to accommodate and staisfy the members and participants of these funds, at the same time keep in mind the type of programs that the fund can carry and they are in communication with other employees with regard to this during the course of the negotiations.

THE COURT: All right, I want to thank counsel for your cooperation in being able to compress this hearing into one day. You started

.11 certain work and be paid certain money. There was a stipulation here today to the effect that the union has signed one new collective bargaining agreement since January 1, 1977, and renewed five others, renewed five others.

Now, in the affidavit submitted by Ms. Calfee in support of the application for a stay here on an extension of the consent order and a new order, she stated in paragraph 7 the available evidence indicates that payments are being paid to defendants, Ifola, Calagna, Clarke and Snyder for work performed by the union or for no work, but in any event for any substantial work performed for the defendant corporation. All the evidence we hared today, most or all of their work was concentrated on the welfare benefits received by the members of the union. There was very little evidence about the actual work they performed for the union in negotiating contracts and there couldn't be because you only had one new contract here, one; and number two, five others were renegotiated.

Now, when you renegotiate a contract as Mr. Snyder said, the employer expects to have to raise the salary of the men, but he fights you on

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the pension and welfare fringe benefits because that's a heavy burden on him. That's where they have all their problems; so I think the Court should take into consideration the number of contracts that were negotiated, and the period recited in the order to show cause and the consent order, and the renewal contract, and keep in mind just what these men said they did.

You have Mr. Calagna who went out and said you don't know what pressures are put on us when we have to hassle with the men. I have negotiated on contracts, not as much as Mr. Simon has; I know when the men are concentrating on the welfare plan that's the most important thing for the men who are working, they know they are going to get their raise in salary. They want to know that they have their health benefits, dental, and all the other benefits that they have.

I say that seems to be the crux of the theory of the Government in moving into this court in order to have the Court set aside the consent order and maybe substitute, as they say, a receiver or some other remedy which the Court may find, and take the men who have been running this organization properly and replace them with somebody else.

13 THE COURT: Well, the Government wants me to view the negotiating efforts of the people who testified and perhapd the other field representatives as being totally unrelated to the legitimate functions of the trust or of RPI and view them as union activities.

MR. MURPHY: But they have not been negotiating. The stipulation that we have, one new contract and five renewals.

THE COURT: You have one hundred contracts that are rotated over a period of three years, one every two weeks.

MR. MURPHY: No, no; five renewals, five contracts that come up from this period from February 4, 1977 to the date that they submitted this order to show cause.

THE COURT: That's roughly eight or ten weeks. I works out to one every two weeks, February 4, March 4 and April 4, the end of April now; eleven weeks, five contracts plus a new one; one undred over three years is thirty-odd a year; fifty a year would be one a week.

I gather what you are saying, Mr. Murphy, there is not that much work involved so we shouldn't pay that much attention to it; or are or are you saying that these are legitimate functions of RPI.

MR. MURPHY: I say there is not that much work involved, you shouldn't pay any attention to it.

THE COURT: I'm not prepared to render any decision at this point, I want to do some research. I want to familiarize myself a little more with ERISA. I would hope that I would have a decision for you within a week.

MR. SIMON: Thank you, your Honor.

* * *

PLAINTIFF'S EXHIBIT 22 - STIPULATED DOCUMENT OF PAYMENTS TO DEFENDANTS

PLAINTIFF'S EXHIBIT 22

8. [redacted]

9. All sums ~~The "service income"~~ paid to R.P.I. ~~for "claims processing"~~ from the pension and welfare plans ~~has~~ for services has been as follows since January 1, 1977

a) Pension 1/1/77 - ~~3/25/77~~ 4/1/77 ~~$6,000~~ 9,000
b) Welfare 1/1/77 - ~~3/25/77~~ 4/1/77 $90,000 110,000

10. Between 2/7/77 and 4/19/77, R.P.I. has made the following payments to the following individuals. The headings "salary" and "expenses" are the headings in R.P.I.'s ledger books under which said payments are recorded.

Anthony Calagna

Check No.	Date	Salary	Expenses
1959	2/10/77	600	150
1983	2/18/77	600	150
2000	2/25/77	600	150
2112	3/7/77	600	150
2063	3/14/77	450	150
2074	3/21/77	450	150
2081	3/28/77	450	150
2110	4/4/77	450	150
2123	4/11/77	450	150
2146	4/19/77	450	150
	TOTAL	5100	1500

James Isola

Check No.	Date	Salary	Expenses
1952	2/7/77	675	150
1960	2/14/77	675	150
1981	2/17/77	1350	
1989	2/18/77	675	150
2006	2/24/77	675	150
2018	3/7/77	675	150
2058	3/3/77	1350	
2066	3/14/77	525	150
2075	3/21/77	525	150
2082	3/28/77	525	150
2111	4/4/77	525	150
2124	4/11/77	525	150
2147	4/19/77	525	150
	TOTAL	9225	1650

William Snyder

Check No.	Date	Salary	Expenses
1957	2/7/77	450	150
1961	2/14/77	450	150
1984	2/18/77	450	150
2001	2/25/77	450	150
2013	3/7/77	450	150
2067	3/14/77	375	150
2076	3/21/77	375	150
2083	3/28/77	375	150
2112	4/4/77	375	150
2125	4/11/77	375	150
2148	4/19/77	375	150
		4500	1650

Clarence Clarke

Check No.	Date	Salary	Expenses
1951	2/7/77	150	150
962	2/14/77	150	150
1985	2/18/77	150	150
2002	2/25/77	150	150
2014	3/7/77	150	150
2069	3/14/77	150	150
2077	3/21/77	150	150
2084	3/28/77	150	150
2105	3/25/77	600	
2113	4/4/77	150	150
2151	4/14/77	150	150
	TOTAL	2100	1500

	Salary	Salary	Expenses	Expenses
Ronald Kremens	✓1341	1493 ✓	~~800~~	900
John Gonzalez	2594	3458	~~1070~~	1430
Peter Devuono	1256	1747	~~536~~	737
Annie Craig	1400	2000		3067
Linda Frank	770	1100		
Marie ~~Simpson~~ SHANNON	1050	1500		
Michelle Pellegrito	540	540		
Mary Schmitt	550	550		
		12698		

MEMORANDUM AND ORDER OF PRATT, J. DATED APRIL 28, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - x

F. RAY MARSHALL, Secretary of Labor of the United States,

Plaintiff,

DOCKET NO. 77 C 116

- against -

MEMORANDUM AND ORDER

GEORGE SNYDER, ROSARIO ALBANO, GEORGE ARTH, ANTHONY CALAGNA, CLARENCE CLARKE, IRVING CONVISER, JOSEPH GRIPPO, JAMES ISOLA, JAMES KANT, SOL LIPSHITZ, BENJAMIN PETCOVE, IRVING ROSENZWEIG, WILLIAM SNYDER, GENERAL TEAMSTERS INDUSTRIAL EMPLOYEES LOCAL 806, and 806 RECORD PROCESSORS, INC., a New York Corporation,

Defendants.

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PRATT, J:

Invoking the Employee Retirement Income Security Act of 1974 (ERISA), 29 USC §§ 1001 et seq., the Secretary of Labor has brought this action to obtain equitable relief to redress alleged violations of Title I of ERISA. Subject matter jurisdiction exists under ERISA §502(e)(1), 29 USC §1132(e)(1).

The complaint designates as defendants: General Teamsters Industrial Employees Local 806 (Local 806 or the

Union); several present and former trustees of the Union's Health and Welfare Fund (the Welfare Plan), Pension and Retirement Fund (the Pension Plan), and Annuity Fund (the Annuity Plan); and 806 Record Processors, Inc. (RPI). Alleged to be a wholly owned subsidiary of the Welfare Plan, RPI performs the administrative functions of all the Plans. Some of the defendant trustees are members of the Union's Executive Board; some are officers, directors, or employees of RPI; and some are both.

In the main action, the Secretary seeks to redress past dissipation of the assets of the Plans and to prevent similar dissipation of their assets in the future. On January 25, 1977, the Secretary moved for a preliminary injunction and appointment of a receiver. Prior to the return date, the parties agreed to and submitted to the court an order for a consent disposition of the motion. On February 4, 1977 the then acting "Miscellaneous Judge" signed the consent order which provides in part:

> 1) that defendant trustees of the Local 806 Welfare Fund, Pension Fund, and Annuity Fund shall not make or permit to be made any direct or indirect payments for any purpose from the assets of the respective Funds of which they are trustees to defendant George Snyder, to any of the other individual defendants, to defendant Local

> 806, or for the benefit of any of said defendants;
>
> 2) that defendant 806 Record Processors, Inc. shall not hereafter make or permit to be made any direct or indirect payments for any purpose from its assets to defendant George Snyder, to any of the other individual defendants, to defendant Local 806, or for the benefit of any of said defendants; with the only exception that 806 Record Processors, Inc. may continue to make salary payments for services actually rendered to defendants Clarence Clarke, Anthony Calagna, James Isola, and William Snyder in amounts not exceeding the following:
>
> | | Maximum per Week |
> |---|---|
> | Anthony Calagna | $ 750 |
> | Clarence Clarke | $ 300 |
> | James Isola | $ 825 |
> | William Snyder | $ 600 |
>
> 3) that defendant trustees of the Welfare Fund, Pension Fund, and Annuity Fund shall make all books and records of the respective Funds and of 806 Record Processors, Inc. available for inspection and copying to the attorneys for the plaintiff or their agents, during normal business hours upon one (1) day's prior notice.

The Secretary now claims that the consent order has been violated and, asserting that the assets of the Plans are still being dissipated to the detriment of the participants and beneficiaries of the Plans, he has moved for an order (1) appointing an interim receiver to manage and control all income, assets, and disbursements of the Plans and RPI; (2) holding the defendants in contempt of the consent order of February 4, 1977; (3) enjoining RPI and the trustees of the Plans from making payments to defendants Calagna, Clarke, Isola, and William Snyder; (4) directing defendants to comply with subsequent discovery demands made by the Secretary in accordance with the Federal Rules of Civil Procedure; (5) awarding the Secretary reasonable fees and costs; and (6) granting him "such further relief as may be equitable and just".

The Secretary bases his instant claims for relief on two principal contentions. First, he asserts that defendants are permitting payments to be made to Isola, Calagna, Clarke, William Snyder and other unspecified defendants in violation of the consent order. More specifically, the Secretary contends that the Plans through RPI are making payments to those defendants either for no work at all, or for work performed for the Union, and not the Plans or RPI. Second, he asserts that defendants have frustrated his attempts to supervise their performance or non-performance of the consent order by failing to comply with his discovery requests.

With respect to the motion, defendants claim that the payments in question were for the benefit of the Plans and necessary to their operation; that even if a portion of the work done by RPI's employees was for the benefit of the Union, precisely that arrangement was contemplated by the consent order which was designed to preserve the status quo; and that defendants have cooperated with, not prevented discovery.

On April 21, 1977 an evidentiary hearing was held. Testimony was elicited from Stanley Geller, the accountant for the Union, the Plans, and RPI; Annie Craig, the medical claim processor for RPI; Constance Mavroson, the bookkeeper and office manager for the Union, the Plans, and RPI; Mary Calfee, an attorney for the Department of Labor; defendant William Snyder, recording secretary for the Union, a trustee of the Annuity Plan, and an employee of RPI; defendant James Isola, vice president of the Union and an employee of RPI; defendant Anthony Calagna, president of the Union and the president and a director of RPI: John Gonzalez, an employee of RPI: and defendant Clarence Clarke, a trustee of the Pension Plan and an employee of RPI. Twenty-five exhibits were admitted into evidence.

For the purposes of the instant motion, the court has made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Local 806 is a union which represents approximately 2,160 member-workers organized into approximately 120 separate "shops", involving approximately 102 employers.

2. The Welfare Plan is a plan established by Local 806 for the purpose of providing the Union's members and their beneficiaries medical, unemployment, and other benefits.

3. About 10,000 potential beneficiaries, including 2,040 union members, are covered by the Welfare Plan.

4. The Pension Plan is a plan established by Local 806 to provide retirement income to the Union's members.

5. About 1,032 union members are covered by the Pension Plan. Seventy-four persons are now receiving pensions under the Plan.

6. The Annuity Plan is a plan organized by Local 806 to defer the accrual of income earned by union members.

7. The Plans are funded by employers of the

Union's members pursuant to rates of payments set up in the Union's collective bargaining agreements.

8. RPI is a corporation, organized in March of 197[illegible], which performs all the administrative functions of the Plans. For instance, it maintains all their records, it processes all claims made against them, and it collects employer contributions owing to them.

9. Defendants George Snyder and Irving Rosenzweig, as trustees of the Welfare Plan, own all of RPI's outstanding stock.

10. The Union's Executive Board currently consists of the following six persons: defendant Calagna, the Union's president; defendant Isola, the Union's vice president; defendant George Snyder, the Union's secretary-treasurer; defendant William Snyder, the Union's recording secretary; defendant Rosario Albano, a trustee of the Union; defendant George Arth, a trustee of the Union; and John Gonzalez, the third trustee of the Union. Of these individuals, only Arth and Albano are compensated directly by the Union, each at $125 per month.

11. The Welfare Plan has two trustees: George

Snyder and Irving Rosenzweig, an officer of an employer under contract with a Local 806 shop.

12. The Pension Plan has two trustees: Clarke and Joseph Grippo, an officer of another "Local 806 employer".

13. The Annuity Plan has four trustees: George Snyder, William Snyder, Irving Rosenzweig, and Benjamin Petcove, who, like Rosenzweig and Grippo, is an officer of a Local 806 employer.

14. RPI's president is Calagna.

15. RPI has three directors: Calagna, Petcove, and Rosenzweig.

16. Calagna, Clarke, Isola, and William Snyder have been employed by RPI as "field representatives" since its organization in March, 1975. ?

17. Gonzalez is also employed by RPI as a "field representative".

18. As of February 4, 1977, Ronald Kremens was similarly employed by RPI. Sometime thereafter his employment with RPI terminated.

19. Peter DeVuone is a paid employee of RPI. He serves as the chauffeur of George Snyder who is not an employee of RPI.

20. The Union, the Plans, and RPI share offices located at 275 Broad Hollow Road, Melville, New York. The various entities do not occupy separate space within these offices.

21. From the time the Union, the Plans, and RPI first occupied their present offices around January of 1976 until shortly after this action was filed in January of 1977, RPI had paid the entire rent for the jointly used offices.

22. The document marked as defendants' Exhibit B purports to allocate the office space rented by RPI to the various entities using that space. It assigns 43% of the space to RPI, 20% to the Welfare Plan, 20% to the Pension Plan, nothing to the Annuity Plan, and 17% to the Union.

23. Exhibit B assigns to RPI, inter alia, three offices which together comprise more than 10% of the leased space. These offices are used by Calagna, Isola, and William Snyder, none of whom performs appreciable in-office duties for RPI. The assignment of the three offices to RPI for purposes

of rent allocation is clearly unwarranted and reflects a more general underestimation of Union use of the rented space.

24. The office space allocation document, Exhibit B, was prepared in November or December of 1976 at the earlies

25. It is more likely than not that an increased fear of civil or criminal sanctions was the reason for the recent move toward shifting to the Union some portion of the rent for the offices occupied by it, RPI, and the Plans.

26. Overall, Exhibit B represents more of a gesture than a bona fide attempt to allocate the Melville office space among the Union, the Plans, and RPI. Exhibit B substantially underestimates the extent to which the offices are used for union as opposed to plan or RPI purposes.

27. Even though Exhibit B was prepared in November or December, 1976, as of mid-April, 1977, only one or two rental payments had been made by the Union for its "share" of the space, with the burden of the remainder of the rent resting on RPI and the Plans.

28. Geller, who is the accountant for RPI, the Plans, and the Union, and who prepared Exhibit B, testified

that eventually the Union's share of the rent for the offices would be paid retroactively.

29. RPI employs at least four clerical employees, all but one (Annie Craig) of whom perform union as well as RPI duties. Nevertheless, they are all compensated by RPI and not by the Union.

30. The Union pays only one clerical employee, Constance Mavroson. She receives $320 per week and is the bookkeeper and office manager for the Union, the Plans, and RPI. Mavroson is not compensated by RPI or the Plans.

31. Aside from Mavroson, Arth, and Albano, only one other person has been on the Union payroll since February 4, 1977, namely James Kant who is retired and has been receiving $400 per month purportedly in back pay.

32. The Union's annual income consists of approximately $350,000 in dues which are deducted from members' wages by employers and paid directly to the Union.

33. The Welfare Plan's annual income consists of approximately $1,000,000 in direct employer contributions.

34. The Pension Plan's annual income consists of

approximately $300,000 in employer contributions.

35. The Annuity Plan's annual income consists of approximately $75,000 in employer contributions.

36. RPI's annual income totals approximately $336,000. It receives about $300,000 from the Welfare Plan each year, about $36,000 from the Pension Plan, and nothing from the Annuity Plan.

37. During the first three months of 1977, RPI received $110,000 from the Welfare Plan and $9,000 from the Pension Plan.

38. From February 7, 1977, through April 19, 1977, RPI paid the following amounts to the indicated individuals:

	Salary	Expenses	Total
Calagna	$ 5,100	$ 1,500	$ 6,600
Isola	9,225	1,650	10,875
William Snyder	4,500	1,650	6,150
Clarke	2,100	1,500	3,600
Kremens	1,493	900	2,393
Gonzalez	3,458	1,430	4,888
DeVuone	1,727	737	2,464
Craig	2,000	0	2,000
Other clerical personnel	6,020	0	6,020
Totals	$35,623	$ 9,367	$44,990

39. Exhibit 22 provides a more detailed breakdown

of the payments summarized above.

40. No salary is paid by the Union to any of the persons listed in finding #38.

41. RPI's "field representatives" do not participate in in-office processing of claims under the Plans or in any other in-office work for RPI of any significance. Clarke signs checks for RPI but does so without reviewing the claims covered by them. His function in this regard entails nothing more than signing his name to checks presented to him by RPI's clerical staff. Any check-signing duties that the other field representatives might perform are no more significant than those performed by Clarke.

42. RPI's "field representatives", including Calagna, Clarke, Isola, William Snyder, and Gonzalez, do provide substantial services for the Union as liaisons to the members and the shops, in organizing new shops, and in renegotiating collective bargaining agreements.

43. Field representatives undoubtedly assist some members of the Union in filling out various plan-related forms; but since the forms are not complicated, problems in completing them are probably almost always solved without the

direct assistance of a field representative.

44. Field representatives sometimes act as liaisons between RPI's clerical staff and union members; however, not only does this liaison function consume a small proportion of the representatives' time, it also is largely unnecessary since the clerical staff is readily available to answer questions and provide assistance to the participants.

45. When they visit the Union's shops, the representatives sometimes answer questions asked by members about the Plans.

46. In the event an employer is substantially, e.g., 60 days, delinquent in its payments to the Plans, field representatives are responsible for seeking collection of these payments; however, substantially delinquent payments are not common. At present, no more than four of the Union's 120 shops are delinquent in their plan payments.

47. Field representatives spend a significant porportion of their time preparing for and engaging in the negotiation of contracts between the Union and various employers. Normally, each shop renegotiates its contract every three years.

48. Since January of 1977, the field representatives have negotiated at least one new contract for the Union and renegotiated at least five old ones.

49. Field representatives are responsible for collecting for the Union delinquent dues payments from employers. Dues are deducted by employers directly from their employees' wages.

50. Field representatives spend a significant proportion of their time organizing new shops for the Union. Organizing a new shop can require the continual efforts of more than one representative over a two-month period.

51. Field representatives are always on call in the event of a dispute or grievance arising at one of the shops.

52. Prior to the organization of RPI, Isola was paid only by the Union and he performed essentially the same functions that he does now as a "field representative" for RPI. No evidence was elicited to show that Isola's experience in this regard differed in any way from that of the other field representatives.

53. On March 23, 1977, RPI, by and through its attorney, refused to produce certain documents and records requested pursuant to FRCP 34, pertaining to said corporation and within its possession and control, notwithstanding the fact that the consent order inter alia expressly provides plaintiff with access to RPI's books and records. RPI's counsel orally stated that such production was being withheld on the ground that the documents pertained to the corporation's internal operations. The asserted ground was frivolous and appears to have been intended to delay and obstruct plaintiff's discovery.

CONCLUSIONS OF LAW

A. The Welfare, Pension, and Annuity Plans are "employee benefit plans" within the meaning of ERISA §3(3), 29 USC §1002(3).

B. As to each of the Plans, each of the following is a "party in interest":

The Union. 29 USC §1002(14)(D)

RPI, as a person providing services to a plan. 29 USC §1002(14)(B)

Calagna, William Snyder, Isola, Clarke, Kremens, Gonzalez, and DeVuone, as employees of RPI. 29 USC §1002(14)(B)

Calagna, Isola, William Snyder, and George Snyder, as officers of the Union. 29 USC §1002(14)(H)

C. As to the Welfare Plan, George Snyder is both a fiduciary and a party in interest by virtue of being its trustee. 29 USC §1002(14)(A).

D. As to the Pension Plan, Clarke is both a fiduciary and a party in interest by virtue of being its trustee. 29 USC §1002(14)(A).

E. As to the Annuity Plan, George Snyder and William Snyder are both fiduciaries and parties in interest by virtue of being its trustees. 29 USC §1002(14)(A).

F. The payments by RPI of salaries to Calagna, William Snyder, and Isola, who are officers of the Union, were prohibited transactions within the meaning of 29 USC §1106(a)(1)(C).

G. The payment by RPI of salary to DeVuone, a substantial part of whose work was as chauffeur for defendant William Snyder, who in turn is a party in interest as an officer of the Union, was a prohibited transaction within the meaning of 29 USC §1106(a)(1)(C).

error

H. The payments by RPI of salaries to Gonzalez, Kremens, and defendant Clarke, a substantial part of whose work was for the benefit of the Union, a party in interest, were prohibited transactions within the meaning of 29 USC §1106(a)(1)(C).

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I. The salaries paid by RPI to defendants Calagna, William Snyder, Isola, and Clarke since February 4, 1977 violated the consent order since a substantial portion of the services performed by them for those salaries were not actually rendered to or for the benefit of RPI or the Plans, but for the benefit of the Union.

J. To the extent that payments were made by RPI after February 4, 1977 to defendants Clarke and Isola for "accumulated vacation pay", those payments violated the terms of the consent order which prohibited RPI from making "any direct or indirect payments for any purpose from its assets * * * to any of the * * * individual defendants" except for certain salaries.

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K. The salary payments made by RPI since February 4, 1977 to Messrs. Gonzalez and Kremens, who were performing substantial services for the Union, violated that part of the consent order which prohibited RPI from making "any direct or indirect payments for any purpose from its assets" either to or for the benefit of the Union.

L. Some of the clerical work done by the four clerical employees who were paid by RPI since February 4, 1977 was work done for the benefit of the Union and, therefore, violated the consent order.

M. Organizing new shops, negotiating new contracts, renegotiating renewals of contracts, handling grievances of union members, and handling other disputes by union members with employers, while all proper union functions, are not proper or appropriate activities for the Plans or RPI to engage in.

N. The best interests of the Plans' participants and beneficiaries require immediate appointment of a receiver for all three Plans and RPI pending final determination of ~~this~~ action.

DISCUSSION

The Employee Retirement Income Security Act of 1974 is a comprehensive remedial statute enacted to protect "the interest of participants in employee benefit plans and their beneficiaries, * * * by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to federal courts." 2[illegible]001(2)(b). Section 1104(a)(1) of title 29 of the United States Code establishes the fundamental standard to which all fiduciaries of employee benefit plans are subject:

> a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and --
>
> (A) for the exclusive purpose of:
>
> (i) providing benefits to participants and their beneficiaries; and
>
> (ii) defraying reasonable expenses of administering the plan;
>
> (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

In this action it is claimed that the defendant trustees as fiduciaries acted, in violation of the statute, neither solely in the interest of the participants and beneficiaries nor prudently in causing or permitting the improper expenditure of plan assets, and making payments which are far in excess of any reasonable expense of administering plans of this size and kind.

Clearly the activities of RPI and the Union have been extensively intertwined. Several employee witnesses acknowledged that in their operations no work distinctions were drawn between the Union, the Plans and RPI.

The consent order represented an attempt to bring these operations in compliance with ERISA which was intended to separate the interests of the Union and its officers from those of the Plans, their participants and beneficiaries. So close are the interrelationships in this case, however, that it is apparently impossible to obtain compliance with the purposes and requirements of ERISA as long as the overlapping of duties, salaries, and interests continues.

The inherent conflict of interest and potential for self-dealing which result from the union officers' controlling both the Plans and RPI, which is the administrative agent of the Plans, coupled with the actual conduct of the defendants since the consent order, and when interpreted in the light of the serious charges of misappropriation of trust fund monies alleged in the complaint, require immediate and drastic action by the court in order to preserve from further dissipation the assets of the Plans for the benefit of their participants and beneficiaries.

The Welfare and Pension Plans pay to RPI over $300,000 a year for record keeping and administration. This constitutes nearly 25% of their total annual income, which should be used primarily for the participants and beneficiaries. On the evidence before the court, it appears that the services required for the actual administration of these Plans do not warrant such a large expenditure. The bulk of the expenditures currently being made is (a) for compensation of the field representatives, all of whom perform substantial services for the Union, but receive no compensation from the Union, and (b) for rental of the offices which are used to a substantial extent for the benefit of the Union, and which in any event are far beyond the reasonable requirements for plan administration.

Accordingly, there is need for the immediate appointment of a receiver of the Plans and of RPI, the corporation wholly owned by the Welfare Plan.

The thrust of this action is to counter past and future dissipation of the Plans' assets. As to past dissipation, the Secretary's allegations focus primarily upon: (1) the excessive compensation of defendant George Snyder, $1,239,500 in two and one-half years; (2) the extension of a $290,000 loan by the Welfare Plan to the Union via RPI, a corporation wholly owned by the Plan; and (3) the use of more than $350,000 of Pension Plan assets to refurbish the offices jointly occupied by the Union and the Plans.

The matters which are subject of this motion show a pattern of manipulation and diversion of plan assets similar to that alleged in the complaint, although here lesser amounts are involved. RPI's payments of salaries to field representatives who perform substantial services for the Union, to clerical employees who perform at least some services for the Union, and to DeVuone who serves as George Snyder's personal chauffeur, all reflect a continuing pattern of diversion of monies to or for the benefit of the Union, and, therefore, not "solely in the interest of the participants and beneficiaries". 29 USC §1104(a)(1).

This dissipation of plan assets must stop if the legitimate rights and expectations of the Plans' participants and their beneficiaries are to be protected. One of ERISA's primary objectives is to safeguard the interests of participants and beneficiaries. Even without the strict standards of ERISA, however, the court's primary concern with such trust assets would have to focus upon similarly protecting the participants and beneficiaries.

Whether the actions of the trustees of the respective Plans in permitting the transactions which have been disclosed here are sufficient to warrant their permanent removal pursuant to 29 USC §1109, is a question which will be determined after a full trial on the merits of this action. For present purposes, the trustees of each of the three Plans need only be suspended from their functions and activities as trustees pending final determination of the action. Until that final determination, all of the trustees' functions shall be performed by a temporary receiver who shall operate and administer the three Plans and defendant 806 Record Processors, Inc. in accordance with the terms of the plan instruments and the requirements of ERISA, and subject to further order of this court. All defendants are ordered to cooperate with the receiver and provide him with such information, records, and documents as he may require for the performance of his duties.

The court reserves decision on that portion of the motion that seeks to punish the defendants for contempt. The contempt defendants are admonished, however, that the court may consider the extent and effectiveness of their cooperation with the receiver as having some evidentiary weight in determining the defendants' states of mind and intentions in connection with their prior dealings with the Plans and with RPI. One of the questions bearing on contempt is whether the contempt defendants believed in good faith, although perhaps erroneously, that the intent of the consent order was to preserve a "status quo" condition even though that "status quo" constituted transactions prohibited under ERISA and perpetuated on a reduced scale a pattern of diversion of trust monies for the benefit of some of the individual defendants and the Union. Whatever may have been their belief then, the contempt defendants can no longer retain that belief in light of this decision. Their conduct has clearly violated both the consent order and the prohibitions of ERISA. Prompt and willing cooperation with the court and its receiver from this point on could be viewed by the court as evidence of the defendants' good faith up to this point.

The plaintiff's motion is granted to the extent that:

A. All defendants are enjoined *pendente lite* from making or causing or permitting to be made any payments by RPI or any of the Plans to defendants Calagna, Isola, William Snyder, or Clarke; and

B. Edgar G. Brisach, Esq. of 1539 Franklin Avenue, Mineola, New York 11501 is hereby appointed receiver of Local 806 Teamsters Health and Welfare Fund, Local 806 Teamsters Pension and Retirement Fund, Local 806 Teamsters Annuity Fund, and 806 Record Processors, Inc. pending final determination of this action.

Plaintiff shall submit on notice to the defendants and the receiver a more formal order of appointment of the receiver, including therein such provisions as may be appropriate for the special circumstances of this case, as well as provision for compensation of the receiver and any professional assistance he may require. In the meantime, from the date of filing this memorandum and order, the receiver shall have all powers over the assets, liabilities, and management of the three Plans and RPI which a receiver customarily may exercise under the jurisdiction of a United States District Court.

With respect to the discovery requests by the plaintiff, defendants and their counsel are directed to comply with plaintiff's demands with a view to completing all discovery expeditiously and scheduling a prompt trial on the merits.

The receiver shall serve initially without bond, but in the more formal order to be submitted for approval by the court the plaintiff shall include an appropriate recommendation as to whether or not a bond should be required, and if so in what amount.

No formal transfer of title to the assets of the Plans and RPI shall take place until filing of the more formal order referred to above.

Defendants are enjoined until further order of this court from making or permitting any property or other transfers of assets by any of the Plans or RPI to any person, firm, or corporation other than to participants or beneficiaries of the Plans for the purpose of paying benefits due under the Plans and wages owed to clerical staff with approval of clerical staff –

On all other aspects of plaintiff's motion, including counsel fees and contempt, decision is reserved.

SO ORDERED.

Dated: Westbury, New York
April 28, 1977.

GEORGE C. PRATT
U. S. DISTRICT JUDGE

ORDER OF PRATT, J. DATED MAY 10, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

F. RAY MARSHALL, Secretary of Labor
of the United States,

Plaintiff,

DOCKET NO. 77 C 116

- against -

GEORGE SNYDER, ROSARIO ALBANO,
GEORGE ARTH, ANTHONY CALAGNA,
CLARENCE CLARKE, IRVING CONVISER,
JOSEPH GRIPPO, JAMES ISOLA, JAMES
KANT, SOL LIPSHITZ, BENJAMIN PETCOVE,
IRVING ROSENZWEIG, WILLIAM SNYDER,
GENERAL TEAMSTERS INDUSTRIAL
EMPLOYEES LOCAL 806, and 806 RECORD
PROCESSORS, INC., a New York
Corporation,

Defendants.

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PRATT, J:

ORDER

On April 28, 1977, this Court entered a Memorandum and Order, making certain findings of fact and conclusions of law, ordering injunctive relief, and appointing Edgar G. Brisach, Esq. as receiver of the Local 806 Teamsters Health and Welfare Fund, the Local 806 Teamsters Pension and Retirement Fund, the Local 806 Teamsters Annuity Fund (hereinafter "the plans") and 806 Record Processors, Inc. (hereinafter "R.P.I.") pending final determination of this action. Pursuant to that Order said receiver has been given all powers over the assets, liabilities, and management of the three plans and of R.P.I. which a receiver customarily may exercise under the jurisdiction of a United States District Court.

In amplification of the Order of April 28, 1977, IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED THAT

1) The receiver shall hereby take legal title to and have exclusive control, possession, and custody of all the assets and property of the plans, and of R.P.I., said assets and property to be held in trust for the participants and beneficiaries of the plans. Defendant trustees of each plan and defendant directors and officers of R.P.I., shall immediately transfer ownership and control of the assets of the plans and of R.P.I to the receiver, including but not limited to the transfer of all account books, stock certificates, certificates of deposit, insurance policies and keys to all offices, safes, safe deposit boxes, and similar locations where plan or R.P.I. assets or records are kept. In addition, the receiver shall notify financial institutions that hold plan or R.P.I. assets of the transfer of ownership. Such trustees shall also execute such documents to transfer ownership and means of control as may be required such as signature changes for all checks, withdrawals, accounts, transfers of assets, etc. Pendente lite the ~~The~~ receiver shall serve as sole trustee ~~pendente lite~~ of each of the plans, and as sole director of R.P.I, and the present trustees of the plans and the present directors and officers of R.P.I. shall be suspended from their positions pending further order of this Court.

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2) The receiver is hereby authorized to collect, receive, and hold in trust for the participants and beneficiaries of the plans all sums of money due or owing to the plans or R.P.I. pursuant to any collective bargaining agreement or otherwise, whether such sums are now due or shall hereafter become due and payable during the period of his receivership.

3) Consistent with the provisions of Employee Retirement Income Security Act of 1974 (ERISA), the receiver shall have the power and duty to manage and to invest and reinvest the assets of

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the plans and shall have the authority to buy, sell, lease, rent or mortgage the assets or property of the plans and of R.P.I.

4) The receiver shall have sole authority to control and manage the operation and administration of the plans and of R.P.I. and shall fulfill these duties in accordance with the documents and instruments governing the plans insofar as such documents and instruments are consistent with the provisions of ERISA. He shall have the power and duty to make any and all changes necessary and appropriate in the administration of the plans and of R.P.I. in order that the assets of the plans be used for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration in accordance with Title I of ERISA and the Orders of this Court.

Such powers shall include but are not limited to:

a) the power to modify wholly or partially change the terms and conditions of employment of current employees, consultants, service providers, or other personnel associated with the plans or with R.P.I.; or to terminate such employment, consultation, provision of services, or association;

b) the power to hire and set the terms and conditions of employment of new employees; to retain counsel except with respect to the claims asserted in the instant litigation; and, as he deems necessary for the proper administration of the plan, to retain other professionals such as accountants, administrators or actuaries or other persons with expertise in the field of employee benefit plans;

c) the power to terminate, renegotiate or otherwise change as permitted by law, any and all contracts or agreements for property, goods, or services, to which any of the plans or R.P.I. is a party.

d) the power to make expenditures from the plans or R.P.I. assets for all goods and services or other expenses and costs reasonably incurred and necessary to the administration of the plans and of R.P.I.;

e) the power to institute, prosecute and defend, compromise, adjust, intervene in or become party to such actions or proceedings as may in his opinion be necessary or proper for the protection, maintenance, collection and preservation of the assets of the plans and R.P.I. or the carrying out of the terms of this Order, and likewise to defend, compromise or adjust or otherwise dispose of any or all actions or proceedings instituted against him as receiver or against the plans or R.P.I. and also to appear in and conduct the defense of any suit or adjust or compromise any actions or proceedings now pending in any court by or against said entities where such prosecution, defense or other disposition of such actions or proceedings will in the judgment of said receiver be advisable or proper for the protection of the property or assets of any of the entities or when such action is in the best interests of plan participants or their beneficiaries; however, the receiver shall have no power or duty to pursue any claims already at issue in this action; and

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f) the power to cease all payments to R.P.I. or with the approval of this c to dissolve the corporation if he determines that the services of said corporation are not necessary to the proper administration of the plans and to reimburse to the plans all sums remaining in R.P.I. accounts.

5) The receiver shall not permit any of the assets of the plans or of R.P.I. to be used either directly or indirectly for the benefit of Local 806 or for any of the individual defendants in this action except to the extent that the individual defendants are eligible to receive benefits as participants or beneficiaries of the plans.

6) The receiver shall apportion all expenses incurred in the administration of the plans so that each plan pays no more than its reasonable share of the total expenses of administering the plans.

7) The receiver, either directly or through his designated agents, shall assume possession and control of all records, books, books of account, ledgers and documents, including correspondence, memoranda, minutes of plan trustee meetings and R.P.I. Board of Directors' meetings and any other form of documentation without limitation which belong to the plans or R.P.I., whether in the custody or control of the plans, R.P.I., plan trustees, R.P.I. directors and officers or other defendants and which relate in any fashion to the creation, staffing, funding or operation of the plans and R.P.I., including lists of contributing employers, levels of contributions, records of plans participants, records of benefit payments, etc. Upon request, the receiver shall make such documents available to the parties herein and shall only permit copying at the expense of the requesting party.

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8) All parties to this action including defendant Local 806 shall promptly make available to the receiver upon request any additional documents which he may request to fulfill his functions properly. Defendant Local 806 and its agents shall make available to the receiver immediately copies of all current collective bargaining agreements, any prior collective bargaining

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agreements which he may request, and shall provide to the receiver, within five days of their execution, copies of any and all future collective bargaining agreements which may affect the plans and which may executed during the pendency of his receivership. GCi USDJ

9) The receiver shall promptly determine which contributing employers, if any, including the union, are delinquent in their payments of contributions to the plans and shall install or modify as necessary a program for the collection of such indebtedness, consistent with the provisions of ERISA.

10) Each of the defendants in their individual or in any other capacity, and each of their agents, employees and attorneys who have actual knowledge of the entry of this order are hereby enjoined from utilizing, diverting, transferring, altering, destroying or removing, either directly or indirectly, any assets, records or property of any of the plans and of R.P.I. and are further enjoined from interfering in any manner with the receiver's administration of the plans or of R.P.I. or in any way hindering or impeding the orderly transfer of custody and preservation of their assets, disbursement of benefits, and payment of proper debts, and management of the business of the plans and of R.P.I.

11) The Receiver shall file with the clerk of this court a bond in an amount not less than is required by provisions of ERISA §412, 29 U.S.C. §1112. The receiver may substitute or add himself to any current bonding arrangement in effect for each of the plans. Payment of the premium for such bond may be apportioned as necessary among the three plans, in proportion to each of their annual incomes. Consistent with the provisions of ERISA §410, 29 U.S.C. 1110, the receiver may authorize purchase by the plans of fiduciary insurance to cover liability for losses

occurring by reason of the act or omission of the receiver.

12) The receiver shall promptly undertake to review the manner of administering the receipts, disbursements, record keeping, employees, rental arrangements, and other operating aspects of the plans and R.P.I. in order to determine generally the changes, if any, in such administration he deems necessary to the lawful and orderly operation of the plans and of R.P.I. under his receivership and he shall make a general report to the court of the changes made and proposed to be made, and shall submit a proposal for future administration of the plans and of R.P.I. under the provisions and pursuant to the powers conferred by this Order. This review will include an assessment of what steps, if any, he may deem necessary and practicable to segregate or separate entirely the office quarters of the plans and R.P.I. from the office quarters of the union. Said review shall be filed with the Court no later than 30 days from the date of this Order with copies sent to counsel for the parties to this action. The receiver shall be compensated for his own services in amounts to be determined by the court from time to time on written application of the receiver on notice to all parties to this action. In each such application the receiver shall report the number of hours spent during the period in carrying out his duties as receiver,

and he shall further report any other facts or circumstances which might properly aid the court in fixing reasonable compensation. Nothing in this paragraph shall be construed to prevent the receiver from making, during this period of initial review, such changes in the administration of the plans and R.P.I. as he may deem immediately necessary for protection of the interests of the participants and beneficiaries, except that the receiver shall not during this period of initial review, without prior approval of the court (1) terminate the present occupancy arrangements at the present offices of the plans and R.P.I. or (2) change the current investment policies for the assets of the plans.

13) The receiver shall permit all parties to the action or their agents, upon reasonable notice to him, to inspect all books and records of the plans and of R.P.I.

SO ORDERED.

Dated: Westbury, New York
May 10, 1977.

George C. Pratt
GEORGE C. PRATT
U. S. DISTRICT JUDGE

MEMORANDUM AND ORDER OF PRATT, J. DATED
MAY 13, 1977

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ MAY 13 1977 ★
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

F. RAY MARSHALL, Secretary of Labor
of the United States,

Plaintiff,

DOCKET NO. 77 C 116

- against -

MEMORANDUM AND ORDER

GEORGE SNYDER, ROSARIO ALBANO,
GEORGE ARTH, ANTHONY CALAGNA,
CLARENCE CLARKE, IRVING CONVISER,
JOSEPH GRIPPO, JAMES ISOLA, JAMES
KANT, SOL LIPSHITZ, BENJAMIN PETCOVE,
IRVING ROSENZWEIG, WILLIAM SNYDER,
GENERAL TEAMSTERS INDUSTRIAL
EMPLOYEES LOCAL 806, and 806 RECORD
PROCESSORS, INC., a New York
Corporation,

Defendants.

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PRATT, J:

Defendant Union and 806 Record Processors, Inc. applied to me at 4:30 P.M. on May 12, 1977, upon telephone notice to all other parties, for an order to show cause bringing on a motion for a stay, pending hearing and determination of those defendants' appeal to the Second Circuit Court of Appeals, of the enforcement and execution of this court's order dated May 10, 1977 appointing Edgar G. Brisach as receiver. The proposed order to show cause contained a temporary restraining or[illegible]. Upon the application, Herbert A. Simon, attorney for the moving defendants, and Edgar G. Brisach, the receiver, both appeared and were heard.

After due deliberation the court declined to sign the order to show cause, and is preparing this memorandum so that all parties and the Circuit Court of Appeals will understand the reasons for such declination. The same reasons which prompted the court's appointment of the receiver initially, seem to militate against any blanket stay of his functioning in that capacity during the pendency of the appeal. The inherent conflicts of interest in the prior pattern of operation of the plans and RPI are operating to the detriment of the participants and their beneficiaries on a continuing basis, with no assurance that the excessive expenditures being made from plan funds would ever be reimbursed. The primary purpose underlying the receiver's appointment was to stop dissipation of trust assets and to protect and preserve the beneficiaries' interests.

The court recognized that not all of the possible actions of the receiver should be taken during an interim appellate situation, and discussed the problem with the receiver and Mr. Simon when the application for the order to show cause was presented. The receiver indicated that the court's order already prevented any major changes in the operations and functioning of the funds and of RPI pending a review and report to the court within 30 days. The receiver also indicated that the names on the bank accounts had already been changed so that he was authorized to sign checks and take other appropriate banking actions for the day-to-day functioning of the plans and RPI.

Considerations both of substance and practicality lead the court to conclude that the interests of justice prevent the granting of the relief sought by the motion. It is imperative that management of the funds and of RPI be separated from the control by Union officials, thereby eliminating the conflicts of interest and their consequences which precipitated this action. Since any other major changes in the operational situation of the plans and RPI are already prevented by the 30 day report provisions contained in the court's original order, and since that period of time can be extended in the event the appeal has not been sooner determined, the request for the order to show cause and the temporary restraining order is denied.

SO ORDERED.

Dated: Westbury, New York
May 13, 1977.

George C Pratt

GEORGE C. PRATT
U. S. DISTRICT JUDGE

NOTICE OF APPEAL OF DEFENDANTS GENERAL TEAMSTERS INDUSTRIAL EMPLOYEES LOCAL 806 AND 806 RECORD PROCESSORS, INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

F. RAY MARSHALL, SECRETARY OF LABOR
OF THE UNITED STATES,

Plaintiff

-against-

GEORGE SNYDER, ROSARIO ALBANO,
GEORGE ARTH, ANTHONY CALAGNA,
CLARENCE CLARKE, IRVING CONVISER,
JOSEPH GRIPPO, JAMES ISOLA, JAMES,
KANT, SOL LIPSHITZ, BENJAMIN PETCOVE,
IRVING ROSENZWEIG, WILLIAM SNYDER,
GENERAL TEAMSTERS INDUSTRIAL
EMPLOYEES LOCAL 806, and 806 RECORD
PROCESSORS, INC., a New York
Corporation,

Defendants

DOCKET NO. 77 C 116

NOTICE OF APPEAL

Notice is hereby given that GENERAL TEAMSTERS INDUSTRIAL EMPLOYEES LOCAL 806 and 806 RECORD PROCESSORS, INC., a New York Corporation, Defendants above mentioned hereby appeal to the United States Court of Appeals for the Second Circuit from:

1. The Memorandum and Order entered in the Clerk's office on the 28th day of April, 1977 enjoining various salary payments to Defendants Calagna, Isola, William Snyder and Clarke and appointed a receiver for Local 806 Teamsters Health and Welfare Fund, Local 806 Teamsters Pension and Retirement Fund, Local 806 Teamsters Annuity Fund and 806 Record Processors, Inc. pending final determination of

this action and ,

2. from the Order entered herein on May 18, 1977 enjoining the Defendants and appointing a receiver from each and ever part thereof.

DATED: May 19, 1977

Yours, etc.,

HERBERT A. SIMON
Attorney for Defendants
99 West Hawthorne Avenue
Valley Stream, New York 11580
(516) 561-6622

TO:

Mary Calfee, Esq.
Office of the Solicitor of Labor
Plan Benefits Security Division
U.S. Department of Labor
Washington, D.C. 20210
Attorney for Plaintiff

Charles F. Murphay, Esq.
Murphy & Maviglia
Attorney for George Snyder and Irving Rosenzweig
250 West 57th Street
New York, New York 10019

Arthur F. Felsenfeld, Esq.
Shea, Gould, Climenko & Casey
Attorney for all other Defendants
330 Madison Avenue
New York, New York 10019

NOTICE OF APPEAL OF DEFENDANTS GEORGE SNYDER AND IRVING ROSENZWEIG

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- x

F. RAY MARSHALL, Secretary of Labor :
of the United States,
:
Plaintiff,
: DOCKET NO. 77 C 116
-against-
: NOTICE OF APPEAL

GEORGE SNYDER, ROSARIO ALBANO, GEORGE ARTH, ANTHONY CALAGNA, CLARENCE CLARKE, IRVING CONVISER, JOSEPH GRIPPO, JAMES ISOLA, JAMES KANT, SOL LIPSHITZ, BENJAMIN PETCOVE, IRVING ROSENZWEIG, WILLIAM SNYDER, GENERAL TEAMSTERS INDUSTRIAL EMPLOYEES LOCAL 806, and 806 RECORD PROCESSORS, INC., a New York Corporation,

Defendants. :

- x

Notice is hereby given that GEORGE SNYDER and IRVING ROSENZWEIG, defendants above mentioned hereby appeal to the United States Court of Appeals for the Second Circuit from the order entered in this action on the 28th day of April, 1977, and the order entered in this action on the 10th day of May, 1977 in amplication of the April 28, 1977 order, which, inter alia, suspended defendants George Snyder and Irving Rosenzweig from their functions and activities as Trustees of Local 806 Teamsters Health and Welfare Fund and Local 806 Teamsters Annuity Fund and appointed a receiver to operate and administer both Funds pending a final determination of this action and from each and every part thereof.

Dated: May 16, 1977

Yours, etc.,

MURPHY & MAVIGLIA
Attorneys for Defendants
George Snyder and Irving Rosenzweig
250 West 57th Street
New York, New York 10019

TO: MARY CALFEE, ESQ.
Attorney for Plaintiff
U.S. Department of Labor
Office of the Solicitor
Plan Benefits Security Division
200 Constitution Avenue, N.W.
Washington, D. C. 20210

HERBERT A. SIMON, ESQ.
Attorney for Defendants Local 806 and 806
Record Processors Inc.
99 West Hawthorne Avenue
Valley Stream, New York 11580

SHEA, GOULD, CLIMENKO & CASEY, ESQS.
Attorneys for all other Defendants
330 Madison Avenue
New York, New York 10019

EDGAR G. BRISACH, ESQ.
Receiver
1539 Franklin Avenue
Mineola, New York 11501

NOTICE OF APPEAL OF DEFENDANTS CALAGNA, CLARKE, GRIPPO, ISOLA, PETCOVE AND W. SNYDER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

--------------------------------------x

F. RAY MARSHALL, Secretary of Labor of the United States,

Plaintiff,

-against-

GEORGE SNYDER, ROSARIO ALBANO, GEORGE ARTH, ANTHONY CALAGNA, CLARENCE CLARKE, IRVING CONVISER, JOSEPH GRIPPO, JAMES ISOLA, JAMES KANT, SOL LIPSHITZ, BENJAMIN PETCOVE, IRVING ROSENZWEIG, WILLIAM SNYDER, GENERAL TEAMSTERS INDUSTRIAL EMPLOYEES LOCAL 806, and 806 RECORD PROCESSORS, INC., a New York Corporation,

Defendants.

--------------------------------------x

Docket No. 77 C 116

NOTICE OF APPEAL

PLEASE TAKE NOTICE, that Anthony Calagna, Clarence Clarke, Joseph Grippo, James Isola, Benjamin Petcove and William Snyder, defendants above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the Order made herein on April 28, 1977 appointing a receiver for Local 806 Teamsters' Health and Welfare Fund, Local 806 Teamsters' Pension and Retirement Fund, Local 806 Teamsters' Annuity Fund and 806 Record Processors, Inc. pending final determination of this action, and enjoining payments to defendants Calagna, Isola, William Snyder and Clarke, pendente lite, and from the Order made herein on May 10, 1977 in amplification of the Order of April 28, 1977.

Dated: New York, New York
May 18, 1977.

Yours, etc.

SHEA GOULD CLIMENKO & CASEY

By
A Member of the Firm
Attorneys for Defendants
Albano, Arth, Calagna,
Clarke, Conviser, Grippo,
Isola, Kant, Lipshitz,
Petcove and William Snyder
330 Madison Avenue
New York, New York 10017

TO:
HERBERT A. SIMON, ESQ.
Attorney for Defendants
Employees Local 806
and 806 Record
Processing, Inc.
99 West Hawthorne Avenue
Valley Stream, New York 11580

MARY CALFEE, ESQ.
Attorney for Plaintiff
Office of the Solicitor of Labor
Plan Benefits Security Division
U. S. Department of Labor
Washington, D. C. 20210

MURPHY & MAVIGLIA
Charles F. Murphy, Esq.
Attorneys for Defendants
Snyder and Rosenzweig
250 West 57th Street
New York, New York 10019

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.

ALBERT HILL, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 2612787.

That on the 15th day of JUNE, 1977, deponent personally served the within JOINT APPENDIX upon the attorneys designated below who represent the indicated parties in this action and at the addresses below stated which are those that have been designated by said attorneys for that purpose

By leaving 1 true/copy ~~copies~~ of same with a duly authorized person at their designated office.

~~By depositing _____ true copies of same enclosed in a postpaid properly addressed wrapper, in the post office or official depository under the exclusive care and custody of the United States post office department within the State of New York.~~

Names of attorneys served, together with the names of the clients represented and the attorneys' designated addresses

MURPHY & MAVIGLIA
Attorneys for Appellants, Snyder
and Rosenzweig
250 W. 57th Street
New York, N. Y. 10019

Albert Hill

Sworn to before me this

15th day of JUNE, 1977.

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Queens County
Commission Expires March 30, 1979

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss .

ROBERT LA GRASSA, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 62-20 60th Rd. MASPETH, NYC.

That on the 15th day of JUNE, 1977, deponent personally served the within JOINT APPENDIX upon the attorneys designated below who represent the indicated parties in this action and at the addresses below stated which are those that have been designated by said attorneys for that purpose

By leaving 1 true/~~copies~~ copy of same with a duly authorized person at their designated office.

~~By depositing _____ true copies of same enclosed in a postpaid properly addressed wrapper, in the post office or official depository under the exclusive care and custody of the United States post office department within the State of New York.~~

Names of attorneys served, together with the names of the clients represented and the attorneys' designated addresses

SHEA GOULD CLIMENKO & CASEY
Attorneys for Appellants, Calagna, Clarke,
Grippo, Isola, Petcove and William Snyder
330 Madison Ave.
New York, N. Y. 10007

JITHENDER RAO
Attorney for Appellee
Office of Regional Solicitor of Labor
Room 3555, 1515 Broadway
New York, N. Y.

Robert La Grassa

Sworn to before me this

15th day of JUNE, 1977.

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Queens County
Commission Expires March 30, 1979